Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

Wilma Wilson,
Petitioner

v.

The State of California,
Ronald M. George,
Patricia Quinn,
Paul A. Turner,
Michael J. Farrell,
Eva Sloan,
Safeco Insurance Company, and
District Court, Central District of California, Western Division
Defendants

On Petition for Writ of Certiorari
To the Ninth Circuit Court of Appeals

PETITION FOR WRIT OF CERITORARI

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128pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether federal district court had jurisdiction over state court clerk's discriminatory ministerial acts and omissions, that remain unreviewed by state appellate courts (42 U.S.C. 1983).

2. Whether California's Vexatious Litigant Statutes (Code of Civil Procedure 391 et seq.) adopted by the Central District of California's Federal District Courts (Local Civil Rule 27A.4), are repugnant to the constitution of the United States.

3. Whether the district court failed to provide an impartial decision-maker, thus violating the due process clause of the Fourteenth Amendment of the Constitution of the United States (28 U.S.C. 455(a) and (b)(4); 5 U.S.C. App. 4, 102).

4. Whether the remedy of declaring the state court clerk's acts and omissions unconstitutional is permitted under the Declaratory Judgment Act (28 U.S.C. 2201 and 2202).

5. Whether the Ninth Circuit's refusal to take jurisdiction because "resolution would require examination of the Vexatious Litigant Statutes as applied to Wilson" "conflicts with the "actual case or controversy requirement" of the Declaratory Judgment Act (28 U.S.C. 2201 and 2202).

6. Whether a disabled *pro se* litigant, forced to represent herself in so unpopular a cause, should have been advised of any deficiencies in her complaint and been granted leave to amend (FRCP 15a).

7. Whether the courts must reject defendants' false and misleading claims that are unsupported by competent evidence; based on evidence rejected by district court; and not presented to Circuit Court as an Excerpt of Record (FRE 102; Local Rule 3.10.2; Circuit Rule 30.1-6).

CORPORATE DISCLOSURE STATEMENT

Defendant Safeco Insurance Company's subsidiaries, known to Petitioner, are:

American States Financial;
F.B. Beattie & Co.;
Comav;
First National Insurance Company of America;
First Safeco National Life Insurance Company;
First Safeco National Life Insurance Company of New York;
General Insurance Company of America;
Lloyd's Management Company;
PNMR Securities, Inc.;
Safecocare Company, Inc.;
Safeco Administrative Services, Inc.;
Safeco Asset Management Company;
Safeco Credit Company, Inc.;
Safeco Insurance Company of America;
Safeco Insurance Company of Illinois;
Safeco Life Insurance Company;
Safeco Lloyds Insurance Company;
Safeco Mutual Funds;
Safeco National Insurance Company;
Safeco National Life Insurance Company;
Safeco Properties, Inc.;
Safeco Securities, Inc.;
Safeco Services Corporation Safeco Trust Company;
Safeco Surplus Lines Insurance Company;
Safeco Trust Company;
Talbot Financial Corporation; and
Winmar Company, Inc.

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This case is important because it is the first case to rely on civil violations of the Ethics in Government Act in an attempt to recuse a district court judge. 1o

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Petitioner Wilma Wilson respectfully petitions for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit to review its Memorandum and Order.

OPINIONS BELOW

The Court of Appeals orders (App. A, C, E and F) and memoranda (App. B and D); and the district court judgment and orders (App. G, H, I and J) and minute orders (App. N, O, Q and R) are unreported.

JURISDICTION

The mandamus order No. 99-71101 concerning recusal was filed September 17, 1999. The petition for rehearing concerning the main action No. 98-56904 was denied August 24, 1999. Petitioner's suggestion for rehearing *en banc* was not addressed. This court has jurisdiction under 28 U.S.C. 1254(1). Notification under Rule 29(a) may apply and the Solicitor General of the United States is being served under 28 U.S.C. 2403(a).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

This case involves Article III paragraph 2, and the First, Fifth, Seventh, Eighth and Fourteenth Amendments of the Constitution of the United States; California Code of Civil Procedure 391, 391.1, 391.3, 391.6, 391.7, 412.20, 585(b) and 904.1; Labor Code 3602 and 3852; 5 U.S.C. Appendix 4, Section 102; 28 U.S.C. 455, 1331, 1332, 1343(a)(3), 1355(a)(1), 1361, 1651, 2106, 2201 and 2202; 42 U.S.C. 1983; Circuit Rule 30-1.6; Federal Rule of Civil Procedure 11, 12(f), 15(a), 19(a), 55, 60(b); Federal Rule of Evidence 103, 201, 402 and 403; and Local Civil Rule 3.10.2 and 27A.4 fully set forth herein (App. U).

STATEMENT OF THE CASE

Petitioner is suing Safeco, a diverse, large, impersonal corporation with whom she's dealt since 1985. When their present law firm took over, it asserted a name change to General, a smaller subsidiary of lesser value. Petitioner does not concede that issue.

Petitioner was injured on the job by solvents, powder and more than 80 other chemicals with which she worked for 19 years.

She filed a workers' compensation claim[1]. Safeco insured her employer. Safeco filed a false medical report. It was a pretext to terminating her benefits and firing her from her job of 13 years.

Seven years later a court appointed doctor impeached Safeco's doctor's report and Petitioner learned of Safeco's fraud. The workers' compensation judge awarded Petitioner past and further medical benefits and a token monetary sum. He did not address her allegations of Safeco's fraud. Workers compensation is not a defense in a fraud action [*Ramey v. General Petroleum Corp.*, 173 Cal.App.2d 386, 402 (1959)]. Fraud is an exception to workers compensation exclusivity (Labor Code 3602(b)(2) and Labor Code 3852). At Safeco's attorney's urgings, no state or federal court ruled on the merits of Safeco's fraud. *Clark v. Yosemite Community College Dist.*, 785 F.2d 781, 788 (9th Cir. 1986) says a party who successfully blocks litigation of a cause of action in one proceeding may not hide behind the defense of *res judicata* in the second proceeding.

Due to irregularities in the worker's comp proceedings and Safeco's diversity, Petitioner brought suit in federal court alleging civil rights violations and fraud. Federal Magistrate Judge Rosalyn M. Chapman sent her back to state court saying, "a dismissal here would not be on the merits.. it would not prejudice you.. to refile".

Petitioner brought suit in Superior Court of California, County of Los Angeles, Northwest District, Case No. LC 040186. on February 14, 1997 and served Safeco on March 14, 1997 (App.

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1 California workers' compensation cases are supposed to be heard within 5 years of injury. Insurers are required to continue benefits until the case is heard. However Safeco submitted a fraudulent medical report concealing the industrial cause and extent of Petitioner's injuries. It claimed she suffered a pre-existing condition unrelated to her work. Her benefits were halted after only five months.

Safeco then delayed adjudication for more than seven years. Each time a hearing approached they insisted she be examined by another doctor, 12 in all. A court-appointed doctor impeached Safeco's doctor's report, testifying Petitioner's injuries were 100% industrially incurred, and she had *no* pre-exiting condition. Petitioner was awarded a token monetary amount plus "past and further" medical benefits. When she presented $8000 in bills, they paid only $1000. When she pointed out their errors, they maliciously said they overpaid twice her entitlement. When she attempted to continue negotiations, their present law firm told petitioner to stop communicating directly with their client. No further payments were made. Safeco currently owes Petitioner approximately $34,000.

L1). Safeco failed to respond within the mandatory 30 days [CCP 412.20(a)(3)] with the appropriate document to prevent default - [CCP 585(b)]. They did file a Motion to declare Petitioner a Vexatious Litigant (CCP 391.1) seeking a $35,000 security bond.

Petitioner filed a Request for Entry of Safeco's default on May 7, 1997 (App. L2). State default clerk Sloan, under color of state law, denied Petitioner's request. Despite her familiarity with the mandatory language of CCP 412.20(a)(4): "default *will* be entered"; and CCP 585(b): "*shall* enter the default", clerk Sloan in bad faith, rejected Petitioner's request (App. L3). She claimed the Vexatious Litigant motion prevented default. As a *pro se* litigant Petitioner was singled out and denied equal protection of default laws under the Fourteenth Amendment represented litigants enjoy.

Safeco erroneously claimed their Vexatious Litigant Motion stayed the demurrer proceedings. It did not. It is *not* mentioned in CCP 585 as a document that prevents default. It merely allows for a concurrent motion to Stay to be filed. Safeco failed to file a concurrent Stay, or other CCP 585 document.

Safeco prevailed in having Petitioner declared a Vexatious Litigant by submitting court documents of every Southern California person with same and similar names, and misleading the court into believing they were Petitioner's cases. Prior to being the target of Safeco's fraud, Petitioner had *never* set foot in a superior or federal court.

Petitioner was ordered to pay $10,000 security under CCP 391, 391.1, 391.3, and 391.7. Had she failed her case would have been dismissed under section 391.4. Since it exceeded $5000, CCP 904.1 allowed an immediate appeal. Superior Court Judge Farrell did not address the default in his vexatious litigant order.

Petitioner appealed to state court questioning Sloan's discriminatory rejection of her Request for Entry of Safeco's Default and the constitutionality of the Vexatious Litigant Statutes. Judge Turner evaded her claims by imposing CCP 391.7 on her.

Petitioner complied with the prefiling order imposed by CCP 391.7 and applied to the state supreme court for an order to seek review. Chief Justice George didn't act on it. Clerk Quinn refused Petitioner's petition. CCP 391.7 threatens *contempt*, increased *security* and *automatic dismissal* for filing without a court order. .

Quinn's supervisor later advised Petitioner that the court

never acts on such application. This indicates that George's practice reaches beyond Petitioner's case. Quinn's boss also said Petitioner had a right to seek review. Any untimeliness of Petitioner's California Supreme Court petition was due to clerk Quinn's different interpretation of the statute from her boss'.

Petitioner thought her recourse was by *writ of ceritorari* to this Court. She filed such a Petition on January 27, 1998 based on the unconstitutionality of California's Vexatious Litigant Statutes and Sloan's refusal to enter Safeco's default. On February 3, 1998 her petitions were returned with a letter advising her that the Court of Appeal was the proper avenue to this Court's review (App. K).

In her opposition Petitioner asserted that superior court lacked jurisdiction over Safeco's untimely demurrer[2]. Safeco had already defaulted. They had no meritorious defense. They prevailed in state court by making a multitude of false claims[3].

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2 "This court is without jurisdiction to hear the issue of Safeco's demurrer being timely or not. It is the subject matter of Plaintiff's Appeal. Her Opposition to their demurrer is not to be construed as her concession that their demurrer is timely. She is filing this in order to protect her rights."

3 State courts ruled in Safeco's favor based on the following false claims:

"Safeco's attorney, Eric Little, on April 14, 1997, in his Notice and Motion to Require Security and Prohibit Filing New Litigation, misled the court 35 times by saying that Petitioner's claims had already been litigated on the merits."

"Safeco's attorney Murch misled superior court Judge Farrell in his May 13, 1997 Reply to Opposition to Motion to Require Security and Prohibit filing of New Litigation by stating, "The Court in Wilson III stated on the record that her case was unmeritorious". Petitioner reviewed Judge Baird's and Magistrate Judge Chapman's written and spoken statements and can find no such comment.

"On August 15, 1997, Murch, for law partner Goettsch misled Judge Farrell in his Demurrer by saying Petitioner's case was a WComp appeal. It was a fraud case. He also misled the court by saying one cause of action was "negligence"; when they were for misrepresentation, fraud, insurance code violations, bad faith, breach of duty, fraud and intentional infliction of emotional distress.

"On October 24, 1997, Goettsch, in his Reply to Opposition to Demurrer, falsely claimed Petitioner sued "General" for "negligence". She sued "Safeco" for "misrepresentation, fraud, insurance code violations, bad faith, breach of duty".

"On January 26, 1998, Murch, in his Answer to Petition for Review, falsely claimed that "the Court found those (federal) suits not reasonable or in good faith". No such comment appears in the orders or transcript. He also falsely attributes *Marsh & McLennan, Inc. v. Superior Ct*, 49 Cal.3d 1 (1989) as saying "Workers' compensation is the exclusive forum for claims of fraud". Not only does that comment not appear in the text, but his claim is contrary to case law.

District Court Proceedings

Petitioner filed a verified *pro se* civil rights action in federal district court on May 12, 1998[4] (42 U.S.C. 1983). She sought declaratory and injunctive relief due to the unconstitutional acts and omissions by state court default clerk Sloan and the unconstitutionality of the Vexatious Litigant Statutes (CCP 391 *et seq*). She sought monetary relief from Safeco only, in the amount of their default plus compound interest. She sought a jury trial. She notified the Governor and state Attorney General of the suit.

Judge Dean D. Pregerson attempted to transfer the case to Judge Lourdes G. Baird. Judge Baird declined transfer on the grounds that the present case challenged the Vexatious Litigant Statutes, not workers' compensation procedures, as the earlier case she presided over had (App. J).

All defendants filed motions to dismiss under Federal Rule of Civil Procedure 12(b). Contrary to this Court's February 3, 1998 letter (App. K), each defendant claimed this court had jurisdiction over the case under 28 U.S.C. 1257(3).

On June 24, 1998 Safeco attempted to file a timely Notice of Motion to Dismiss, Proposed Order and Request for Judicial Notice. The clerk rejected them for lack of tables of contents under Local Rule 3.10.2 (App. I). The Judge ordered that they NOT be filed but REJECTED. Counsel was ordered to advise all parties of the discrepancies, but failed to advise Petitioner. Nor did Safeco serve her with a corrected Request for Judicial Notice. She did not discover this until she viewed the file preparing her appeal.

On July 13, 1998 Petitioner filed a Motion to Strike Safeco's Request for Judicial Notice based on its content being redundant, immaterial and impertinent [Federal Rule of Civil Procedure

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4 Attached to her complaint was proof of service of the state complaint on Safeco; her Request for Safeco's Default; Sloan's discriminatory rejection of Request for Safeco's Default; a list of California's 331 Vexatious Litigants; and state court of appeal judge Turner's biography (App. L1-5).

Concurrently Petitioner filed a notice of related cases, pointing out the similarities between her case and cases of other Vexatious Litigants. One was by an injured worker who also filed fraud allegations against Safeco. Another was by a postal worker who alleged his workers' compensation insurer wrote a false medical report. Approximately one third of all Vexatious Litigants state wide, were deemed so by Los Angeles county superior courts. Being in *pro se*, the law does not allow Petitioner to bring a class action suit on behalf of the other victims.

12(f)], petitioner's substantial rights being affected [Federal Rule of Evidence 103 (a)(1)]; evidence that is not relevant is not admissible (Federal Rule of Evidence 402); and due to prejudice, confusion, misleading the jury (Federal Rule of Evidence 403).

Safeco refiled a 12(b) motion to dismiss. Petitioner advised district court of specific instances wherein Safeco's attorneys made false and misleading claims in order to prevail in state court[3]. As a result Petitioner was forced to refile her action, thus making it appear that *she* was the vexatious party. Safeco's motion was not responsive to the issues. It's as if the client reads only their motion and is being kept in the dark about their attorney's default blunder, for fear the client may wish to settle their law firm's cash cow.

On September 29, 1998 judge Pregerson dismissed the case for lack of subject matter jurisdiction. He denied leave to amend the original complaint. He found the Eleventh Amendment a bar. He denied leave to join the state attorney general. He held that this Court had jurisdiction under *Rooker/Feldman*. He denied joinder of the state attorney general [FRCP 15(a)]. He held the vexatious litigant statutes not facially unconstitutional. He found the state legislature did not violate the constitution. He found due process was not violated. He claims an attack as to the Vexatious Litigant Statutes being overbroad, is beyond the court's jurisdiction. He made an anticipatory ruling that amendment would fail to state claim a upon which relief could be granted. He threatened monetary sanctions for post judgment motion or suit against defendants. He misconstrued her request for appointment of counsel as a *forma pauperis* request. He refused her constitutional challenge to the Vexatious Litigant statutes because they were "applied to" plaintiff. He failed to justify his review of state court judgments over which he had no jurisdiction (App. H).

Petitioner also asked that Safeco be ordered to remove any clouds, liens or encumbrances they had placed on Petitioner's home; that she be advised of any deficiencies in her complaint; that the motions to dismiss be denied; to enjoin state officials from administering and enforcing the Vexatious Litigant Statutes; and that the Vexatious Litigant List be disbanded. All were denied.

Judge Pregerson dismissed the case without oral argument; without appointing counsel; and without granting leave to amend (App. H). He denied Safeco's vexatious litigant motion and

$35,000 security request, but invited them to renew their motion (App. H). He deemed the case a workers' compensation challenge despite Judge Baird's advice that it was not (App. J).

District court virtually ruled on the case defendants presented and failed to recognize that Safeco had already defaulted before the issues the court critiqued were ruled upon.

Almost two months after dismissal Petitioner was advised that Judge Pregerson had represented the insurer and could be recused. He had represented General Insurance. General is a subsidiary of Safeco and the entity Safeco's attorneys claim is the proper party to sue. He had not advised her of their former association nor offered to recuse himself during the proceedings.

On November 30, 1998 Petitioner filed a Motion for Disqualification based on the appearance of partiality under 28 U.S.C. 455(a), judge's failure to disclose the conflict, and the importance of public confidence in the integrity of the judicial system. She attached a 1994 proof of *attorney* Pregerson's representation of defendant insurance company (App. T). She based her motion on the insurer's 14 year long pattern of oppression in Petitioner's case[5] and Judge Pregerson's similar

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5 Safeco's *modus operandi* appears to victimize the injured, elderly and grief stricken claimants who lack the financial support of a spouse:

In Petitioner's case Safeco submitted a false doctor's report to workers' compensation. They withhold court ordered medical benefits. They made false claims to the courts to avoid a trial on the merits of their fraud. They inflated costs by 1300%. Five days after being paid they sought double payment from her Social Security benefits. They seek duplicate recovery from the court of appeals for items she paid for at the state court level. In a bad faith attempt to financially cripple her and bar her from a jury trial, they had her declared a vexatious litigant.

In *Raul Marin Gonzalez'* case, Los Angeles Superior Court number BC 108495, Safeco submitted a false doctor's report to workers' compensation. They withheld court ordered medical benefits. They had Mr. Gonzalez declared a vexatious litigant. His home has since been foreclosed on by Housing Urban Development. LaTorracca and Goettsch represented Safeco.

In 78 year old Northridge home owner *Phyllis Ziello's* case, Los Angeles Superior Court number BC106363, Safeco refused to pay her earthquake benefits directly. They forced her into bankruptcy, case number LA 95 38368 VZ. Four years and eleven folders of papers later she was awarded what she had sought in 1994, plus interest. Recently her attorneys were awarded $140,260 in fees, more than twice the value of her original damage (State Court of Appeals, Second District, case no. B 133123). LaTorracca and Goettsch represented Safeco.

pattern of behavior when he defended the insurer in a spoliation of evidence suit against relatives of plane crash decedents[6].

He refused to disqualify himself and referred the matter to Judge Margaret M. Morrow. Judge Morrow misconstrued the motion as one under Sections 144 and 455(b) and faulted Petitioner for not adducing evidence of actual bias. On January 8, 1999 unsigned minutes were entered denying Petitioner's motion.

On January 15, 1999, Petitioner advised the court that Judge Pregerson's law firm's representation of defendant insurance company continued through October of 1996 (App. S). This was two months beyond his federal appointment and a mere 18 months prior to his jurisdiction over Petitioner's case.

Petitioner sought relief from judgement, pointing out the obvious misunderstanding between 28 U.S.C. 455 section "a" on which Petitioner relied, and section "b", on which the court based its denial of relief. At the time 18 months of income was at stake in pending post judgment motions brought by Safeco.

Again she was denied relief in unsigned minutes entered February 17, 1999 (App. Q).

After a seven-week delay, Petitioner received Judge Pregerson's Financial Disclosure Report. He admits to continued receipt of payment from former clients (App. P). His report fails to state the source, type, amount or value from any source other than employment by the United States government (Title 5, App. 4, Section 102, the Ethics in Government Act).

On February 25, 1999 Petitioner filed a motion for relief from order in Federal Rule of Civil Procedure 60(b)(2) due to ambiguities in Judge Pregerson's Financial Disclosure Report. Since his law firm continued to represent General/Safeco beyond his appointment, it stands to reason that payment occurred while on the bench, and possibly during adjudication of Petitioner's case.

Petitioner requested an order that Judge Pregerson fully disclose the identity, dates, amount of payment from his August of 1996 federal appointment to payments expected in the future (5

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6 Grief stricken family members of plane crash decedents *Dicus* (California Central District Court CV 94-0892); *McMillan* (California Central District Court CV94-0933); and *Angela, Brian, Evan and Gregory White* (California Central District Court CV 94-0988); fought for survivor benefits for four years after Safeco destroyed material evidence of their loved ones' deaths.

U.S.C. App. 4 Section 102). She relied on 28 U.S.C. 455(b)(4) a judge *shall* disqualify himself if... he has a financial interest... in a party in the proceeding, but the court relied on the section of 455(b)(4) that limits the judge's financial interest to "that could be substantially affected by the outcome of the proceeding."

In unsigned minutes entered May 21,1999 Judge Morrow denied Petitioner's motion saying the record didn't show that Judge Pregerson was owed money by General/Safeco and that Petitioner lacked standing to challenge the Report (App. O).

On June 1, 1999 Petitioner requested a stay pending the Judicial Conference's investigation into Judge Dean Pregerson's failure to make full and complete statement of his income.

On July 20, 1999 unsigned minutes were entered denying Petitioner's request to stay the proceedings because she failed to present evidence that the Judicial Conference had already initiated proceedings (App. N). Judge Morrow heard no oral argument.

Court of Appeal Proceedings

On October 29, 1998 Petitioner filed her Notice of Appeal.

On November 23, 1998 she filed a Motion for appointment of counsel[7] with attachments to and from other Vexatious Litigants describing their plight (App. M).

In their opposition Safeco felt that submission of other Vexatious Litigants' statements (App. M) "lacked foundation". This in itself is demonstrative of the need for appointment of counsel. The goal of 28 U.S.C. 2106 is a *just* determination. But on January 22, 1999 the court issued an order denying Petitioner's request for appointment of counsel (App. F) because it felt her case did not present exceptional circumstances.

On March 5, 1999 Petitioner filed her first request to present oral argument on March 5, 1999 under Federal Rule of Appellate Procedure 34 and Circuit Rule 34-4 which agree that oral argument

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7 She has attempted to gain representation. The consensus of opinion was: her claims are meritorious; being single and on a fixed income she could not afford to pay an attorney; no attorney would take the case on a contingency; the Van Nuys Workers Compensation office is corrupt; any case having its roots in workers' compensation would be met with more opposition than any attorney is willing to take on; the insurance company has unlimited funds to support their fraud; it would be counter-productive for a private sector attorney to argue against the Vexatious Litigant Statutes; a few cited a conflict of interest. *See* App. M.

will not be heard when the facts and legal argument are adequately briefed.

On March 16, 1999 Petitioner filed an Errata to her Excerpts of Record with a new index transposing two documents.

Safeco's Answering Brief was due March 29, 1999 (App. F). It appeared they were going to settle. Eight days later, on April 6, 1999 they filed a Motion for a Procedural Order Clarifying Briefing Schedule. Despite its untimeliness Safeco was granted permission to file late (App. E).

On May 24, 1999 Petitioner filed a Motion to Strike Safeco's Request for Judicial Notice. It differed from the one rejected by the district court for lack of an index, only by the addition of the district court order and judgment.

On May 24, 1999 the court rejected an *Amicus* Brief describing how Vexatious Litigant Statutes deny court access.

On June 3, 1999 the court notified Petitioner that it was considering submission without oral argument. Having suffered under district court's misapprehension of material issues of fact and law, she asked to present oral argument on June 11, 1999.

On June 16, 1999, without oral argument, the three judge panel issued a memorandum (App. D). Being a fellow church member as one judge, the two attended a prayer meeting where two issues were discussed: selecting a new Pastor when Dr. Lloyd Ogilvie was appointed Chaplain of the United States Senate; and Petitioner's work place injuries and how they impacted her ability to engage in gainful employment and continue her charitable work.

On June 16, 1999 Petitioner filed a Petition for Rehearing and Suggestion for Rehearing *En Banc* where she sought the church member's recusal.

On August 3, 1999 the panel withdrew its memorandum (App. C). On August 24, 1999 a panel with one new member issued an unpublished memorandum (App. B). It claimed the court had no subject matter jurisdiction over her 42 U.S.C. 1983 action. It claimed the district court lacked jurisdiction. Having held the clerk's decision in the same esteem as a fully reviewed judgment, it felt that district court lacked jurisdiction over her challenge involving federal constitutional issues. It likened Petitioner's case to a state default that was defeated because the defendant had not been served. It found resolution of Petitioner's

constitutional claims would require examination of the Vexatious Litigant Statutes as applied to her. It claimed Petitioner's was an impermissible collateral attack on a prior California state court "decision". It found leave to amend would have been futile. It rejected her remaining claims as being "without merit".

Petitioner filed a Petition for Mandamus with the Ninth Circuit on August 26, 1999. She asked the court to: (1) compel the Judicial Conference to investigate ambiguities in Judge Dean D. Pregerson's Financial Disclosure Statement; (2) compel Judge Dean D. Pregerson to make full and complete financial disclosure dating back to his 1996 appointment; (3) compel transfer of Petitioner's case to a judge other than Pregerson or Morrow; (4) prohibit Judge Pregerson from hearing any matters on the case pending the Judicial Conference investigation; and (5) compel the stay of further proceedings by Judge Dean Pregerson wherein Safeco or any of their subsidiaries are parties.

On September 17, 1999 the Ninth Circuit Court of Appeals issued an Order denying her Petition, finding it did not warrant the court's intervention by the extraordinary remedy of mandamus.

REASONS FOR GRANTING THE PETITION

Petitioner is an upstanding member of her community who has devoted her life to charitable organizations and other worthy causes. She served as a group leader for Cancer Prevention Study II, and was an Official for the Olympics for the Blind. She served Thanksgiving meals to the homeless at Hollywood Presbyterian Church, contributed generously to Colombian Fathers, and donated a car to Jewish Family Services. She worked Labor Day weekends in an Ensenada Orphanage. She was appointed a Special Advocate by Los Angeles Dependency Court, for abused, abandoned and neglected children. In that capacity, she is an officer of the court.

Petitioner went 39 years without ever setting foot in other than a small claims or traffic court. Now she unwittingly finds herself a 15 year long victim of a workers' compensation insurer's fraud and malice. As a result she has joined 429 others, who are victims of California's Vexatious Litigant Statutes and thereby denied free access to the courts and benefit of state laws.

This case presents important constitutional issues meriting this Honorable Court's attention. The Ninth Circuits' decisions, if not reversed, would perpetuate a decade old pattern of corruption[8]. It would forgive unconstitutional acts by state officials. It would permit lower courts to operate outside this Court's dictates. It would send a clear message that *pro per* and *pro se* litigants lack constitutional access to the courts. It would allow defendants to prevail by false claims without competent supporting evidence. It would encourage district court judges to sit in judgment of former clients from whom they may continue to receive payment. It would confirm the suspicion that justice only goes to the rich.

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8 In the late 1980's the FBI began conducting an investigation into the California legislature, concerning workers' compensation and other insurance matters. The Sacramento U.S. Attorney General's office prosecuted more than a dozen legislators, aides, insurance lobbyists and other special interest group members for bribery, money laundering and other acts of racketeering.

In return for large sums of money, legislation was passed in favor of the concerns they represented. More than a dozen people were convicted or pleaded *nolo contendre* and served prison sentences. They may no longer be in office, but the laws they enacted, favoring special interests, to the detriment of their opponents, remain on the books. California's Vexatious Litigant Statutes, as amended and enacted in the early 1990's are some of the most damaging.

In 1990 Code of Civil Procedure 391(a) was amended to include federal court proceedings. Section (b)(3) gave a judge power to determine if claims are meritorious. Section (b)(4) is an open ended clause, which in effect says once you're deemed vexatious it will always haunt you. Section (b)(e) enables governmental entities to use the Act against those they may have wronged. Section 391.7 was enacted during the reign of those corrupt public servants and their insurance industry co-conspirators. Section (a) provides for punishment as a contempt of court. It allows a judge to decide a litigant's claims have no merit. Section (b) gives a judge the power to impose security. Section (c) provides for a prefiling order which the state supreme court admittedly *never* responds to. It provides for an "automatic dismissal" while court stands idly by. Section (d) provides for a "McCarthyism" type list so litigants' rights are impaired forever.

If this Court fails to strike the Vexatious Litigant Act, or at least drastically amend it, California's citizens will continue to suffer under the oppression of the insurance industry's racketeering legacy.

The Vexatious Litigant Statutes violate the Supremacy Clause of the Constitution of the United States and its First, Fifth, Seventh Eighth and Fourteenth Amendments. They affect an unknown number of litigants who fear being in contempt or being ordered to pay security they cannot afford. Presently 429 names are listed as Vexatious Litigants.

THE COURT BELOW HAS DECIDED AN IMPORTANT FEDERAL QUESTION CONCERNING A STATE COURT CLERK'S MINISTERIAL ACTS AND OMISSIONS IN A WAY THAT CONFLICTS WITH DECISIONS BY THIS COURT AND A STATE COURT OF LAST RESORT

The Ninth Circuit decision, raises an unreviewed clerk's ministerial decision to the dignity of a judgment.

Petitioner filed suit in state court against Safeco. Safeco failed to respond within the statutory 30 day (CCP 412.20) with an appropriate document to prevent default (CCP 585). Petitioner filed a Request for Entry of Default (App. L2) with supporting documents.

Safeco chose to vexatiously[1, 5] delay adjudication of her 12 year old injuries by filing piecemeal, first a motion to declare her a Vexatious Litigant, then a demurrer. If she failed to pay security the case would be dismissed. Safeco sought $35,000, the court ordered $10,000. Meantime Safeco is withholding court ordered medical benefits dating back to 1986, of approximately $34,000.

Superior Court Judge Farrell did not address the default in his vexatious litigant order. Per *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983) district court had original jurisdiction over issues not part of the state court judgment (28 U.S.C. 1331).

In *W. A. Rose Co. v. Municipal Court*, 176 Cal.App.2d 67; 1 Cal.Rptr. 49 (1959) under CCP 585 – where defendant is served (other than by publication) and no answer or demurrer or notices specified has been filed with the court, the clerk *must* upon application, enter default and judgment (71). Petition to the Supreme Court was denied.

Safeco filed their motion but failed to support it with a motion to stay which would have prevented default (CCP 585). CCP 391.6 does not overrule, negate or invalidate CCP 585. CCP 391.6 does not suggest it need not be read concurrently with CCP 585. Judges Weil and Brown in *Cal. Prac. Guide, Civil Procedure Before Trail* (the Rutter Group, 1997) Sections 5:31 and 5:32 warn attorneys to file "protective" documents mentioned in CCP 585 concurrently with those not mentioned. Safeco's failure to file a timely 585 document left them in default. *W. A. Rose Co. v. Municipal Court*, 176 Cal.App.2d 67; 1 Cal.Rptr. 49 (1959) says:

> "The notice of Motion did not constitute an appearance preventing entry of default (party) was entitled to such an entry and clerk should have entered it. Section 585... requires a default to be entered on application, if there is no demurrer, answer or notice of the character specified in section 585 on file"(71).

CCP 585 was enacted in 1905, and amended 10 times since the Vexatious Litigant Statutes were enacted. Not once did legislature deem a Vexatious Litigant motion a document to prevent default.

Although the courts below allude to the clerk's decision as a "judgment", *W. A. Rose Co. v. Municipal Court,* 176 Cal.App.2d 67, 71; 1 Cal.Rptr. 49 (1959) tells us: "the clerk would not have been performing a judicial function. It would have been purely a *ministerial* one". Sloan failed to read CCP 391.6 and 585 together.

Petitioner had a right to the benefit of the state default laws. The mandatory language of CCP 412.20 and 585 required default clerk Sloan to perform her ministerial duty. She had no discretion to act otherwise.

Only by virtue of the fact that Petitioner was in *pro per*, did Sloan use the Vexatious Litigant Statutes to deny Entry of Safeco's Default. Because Safeco accused Petitioner of being vexatious, clerk Sloan singled her out for disparate treatment in contravention of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States. A litigant represented by counsel would have been awarded Entry of Safeco's default.

Petitioner had a constitutional right to the benefit of the same laws every litigant who is represented by counsel enjoys. She has a constitutional right to be treated as an equal to anyone who is represented and files a Request for Entry of Default when a defendant fails to comply with CCP 412.20 and 585.

This Court was clear in *D.C. Court of Appeals v. Feldman,* 460 U.S. 462, 476, 477, 479, 485, 486 (1982) that federal district court has jurisdiction over ministerial and legislative decisions.

The Ninth Circuit decision the case was an impermissible collateral attack on a state court decision, conflicts with decisions by the highest court of the state and this circuit.

The two issues Petitioner presented to federal district court were not addressed in any state court order. District court had

original subject matter jurisdiction over Petitioner's claims under 28 U.S.C. 1331, 1332, 1343 and 1355.

In district court, Safeco insisted Petitioner was attacking a state judgment. They never mentioned their subsequent August 15, 1997 demurrer per se. Petitioner had advised state court it was untimely[2]. Furthermore defendants failed to make express references to the Demurrer in their 12(b) motions to dismiss. Petitioner was first aware of the Demurrer being their defense when Judge Pregerson rendered his decision, without oral argument. Petitioner would have brought a post judgment motion had the judge not threatened sanctions for such an action.

In an application for Entry of Default *W. A. Rose Co. v. Municipal Court*, 176 Cal.App.2d 67; 1 Cal.Rptr. 49 (1959) held:

> "subsequent untimely filing... did not affect the duty of the clerk to enter default when requested, nor did they restore the jurisdiction to the court which was lost when default should have been entered. Certain proceedings subsequent to the time when the plaintiff was entitled to have default entered, did not validate an order which the court had no power to make" (72), "when a statute authorizes prescribed procedure and the court acts contrary to the authority thus conferred, it has exceed its jurisdiction" (73). Petition to the Supreme Court denied.

The state hasn't wavered in its interpretation of CCP 585. In 1995 in *People v. One 1986 Toyota Pickup*, 31 Cal.App.4th 254; 37 Cal.Rptr.2d (Jan. 1995) they reiterated that under CCP 585, the entry of a default terminates a defendant's rights to take any further affirmative steps in the litigation.

The only state judgment that exists is an invalid Demurrer judgment. The state court had no jurisdiction to enter that decision because Safeco was already in default. Petitioner asserted that state court lacked jurisdiction in her opposition[2].

So the state judgment on Safeco's untimely Demurrer was void, a nullity. It was rendered by a court that lacked jurisdiction. The ensuing judgment was not a judgment that would preclude district court jurisdiction over a clerk's discriminatory ministerial denial of Petitioner's May 7, 1997 Request for Entry of Default.

In *Miller v. Cotese*, 110 Cal.App.2d 101, 105; 242 P.2d 84 (1952) the state recognized "where a clerk exceeds the limited power conferred on him by statute (in which event) the clerk's

action is a nullity and *open to attack at any time*". Rehearing was denied as was a hearing by this Court. In *Miller* the clerk exceeded his power by entering a default. In Petitioner's case, Sloan exceeded her power by failing to enter Safeco's default.

Demery v. Kupperman, 735 F.2d 1139 (9th Cir. 1984) this Circuit allowed a suit brought against state officials, by a physician who prescribed controlled substances outside the regular practice of his profession (1142). It recognized the safeguards of correctability on appeal and *collateral attack* (1144). It permitted a suit against a state official seeking injunctive relief from unconstitutional state action (1146, 1150).

There is nothing impermissible about Petitioner's attack on the state court Demurrer. It is a nullity, open to attack at *any* time. CCP 585 prescribed entry of Safeco's default.

THE COURT BELOW HAS DECIDED IMPORTANT QUESTIONS OF FEDERAL LAW THAT HAVE NOT BEEN DECIDED, BUT SHOULD BE SETTLED BY THIS COURT CONCERNING:

CALIFORNIA'S VEXATIOUS LITIGANT STATUTES and THE ETHICS IN GOVERNMENT ACT

This case is important because it is the first case[9] to challenge the Constitutionality of California's Vexatious Litigant Statutes, now adopted as Local Federal Rule 27A.4.

The Ninth Circuit decision, equating the challenge to the constitutionality of Vexatious Litigant Statutes, promulgated by the state legislature, with a challenge to a state court decision, is in conflict with this Court's decision and decisions of other circuits.

District court held that California's Vexatious Litigant Statutes do not offend due process (Fourteenth Amendments) and

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9 The Court is asked to take Judicial Notice under Federal Rule of Evidence 201 of five other cases, currently pending in Federal District Courts, questioning the constitutionality of California's Vexatious Litigant Statutes. They are: *Agha v. Allstate Insurance Company, et al*, U.S. District Court of California, Northern District, Case No. 99cv4829 SI; *Ignacio v. Stewart, et al*, U.S. District Court of California, Northern District, Case No. 99cv1613 MMC; *McColm v. State of California, et al*, U.S. District Court of California, Northern District, Case No. 99cv3049 SI; *Skara v. Gentino, et al*, U.S. District Court of California, Central District, Case No. 99cv3358 GHK; and *Banks v. McConnell, et al*, U.S. District Court of California, Southern District, Case No. 99mc558 (prefiling 99-001).

any further challenge is prohibited by *Rooker/Feldman*. He said Petitioner's attack was beyond the court's jurisdiction but made no attempt to transfer it to the proper court. Federal courts from the Third, Ninth, Tenth, Eleventh and District of Columbia Circuits, have repeatedly struck down injunctions against Vexatious Litigants, even when litigants filed an outrageous number of cases.

In *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) a party filed 36 frivolous cases, but could still maintain a case for extrinsic fraud. But Petitioner was denied court access to obtain a default judgment for Safeco's fraud.

Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984) a prisoner had filed 41 actions and the court limited his filing to 6 per year. California Code of Civil Procedure 391 forecloses free court access to those who file as few as 5 cases in 7 years.

In *Re Oliver*, 682 F.2d 443 (3rd Cir. 1982) a prisoner had filed 51 cases in 13 years. The Third Circuit held litigousness alone won't support an injunction restricting his filing activities because access to the court is a fundamental tenet of our judicial system; *legitimate claims* should receive a full and fair hearing no matter how litigious the plaintiff may be (446). The challenged Statutes have no provision to discern if claims are legitimate.

In *Procup v. Strickland*, 792 F.2d 1069, 1071 (11th Cir. 1986) even though a prisoner had filed 176 cases in 3 years, an order that he must be represented by counsel was found to be too broad. Judge Turner's biography shows he too believes courts exist for *attorneys* to have their day in court (App. L5).

De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990) this circuit conceded that prefiling orders against vexatious litigants should rarely be filed, it being an exception to free access to the courts. CCP 391.1 currently affects 429 *pro se* litigants.

Johnson v. Kemp, 781 F.2d 1570 (11th Cir. 1986) the Eleventh Circuit found it was an abuse to rely on history to impose a higher fee without considering if the previous or present case was in bad faith (1571, 1572). It held that requiring a fee is a considerable hardship and may foreclose access to court (1572). CCP 391.1, 391.3 and 391.7 call for imposition of security, but there is no provision to determine if a case is in bad faith.

Tripati v. Beaman, 878 F.2d 351 (10th Cir. 1989) the Tenth Circuit criticized a prefiling order because the grant or denial of

leave to file an action was left "completely to the whim of the court". Judge Turner dismissed cases under the Vexatious Litigant Statutes under the guise of efficiency 15 of the 32 times it's been used by California's 18 appellate divisions statewide (App L 4, 5).

Overworked courts clear their calendars by denying the most vulnerable members of society their day in court (App. M). If the state wishes to lighten their work load, they should attack the entire spectrum of litigants. If an insurer repeatedly, and in bad faith denies injured parties their rightful benefits, the insurer should suffer defaults, be prohibited from conducting business in that state, or be put out of business altogether[5 and 6].

Moy v. U.S., 906 F.2d 467 (9th Cir. 1990) this circuit held "an injunction cannot issue merely upon a showing of litigousness. The plaintiff's claims must not only be numerous, but also be patently without merit". The order was found overly broad because it prevents *Moy* from filing claims based on facts and issues involved, but also all other disputes (470-471).

When Petitioner was sent back to state court, Magistrate Judge Chapman made no judgment on the merits of her claims. Safeco however falsely misled state court to believe that she had so ruled[3]. As Petitioner, *Moy* had no other history of litigious filings. Now the Ninth Circuit erroneously concludes that Petitioner's claims are without merit. They reached this conclusion based on Safeco's false claims, unsupported by competent evidence.

In *Walker, Inc. v. Food Machinery*, 382 U.S. 172 (1965) this Court found that rights under antitrust outweighed protection from Vexatious suits (176). Similarly where insurers attempt to avoid liability by means of fraud, petitioner's rights in the face of that fraud should outweigh protection from vexatious suits.

Imposition of the Vexatious Litigant Statutes violate a *pro per* se litigant's First Amendment right to petition the Government for a redress of grievance; the Fifth Amendment right to due process of law; the Seventh Amendment right to a jury trial; the Eighth Amendment right not to suffer excessive fines or unusual punishment; the Fourteenth Amendment right to due process; and the Fourteenth Amendment right to equal protection.

This issue is particularly important because the federal district court for the Central District of California has adopted California's Vexatious Litigant Statutes as Local Rule 27A.4.

Frequently other circuits look to the Ninth Circuit for guidance. This Court should scrutinize these unconstitutional laws before unleashed on litigants nationwide, who through disability, age or other reasons beyond their control cannot hire representation.

This case is important because it is the first case to rely on civil violations of the Ethics in Government Act in an attempt to recuse a district court judge.

After a seven-week delay, Petitioner received Judge Pregerson's Financial Disclosure Report wherein he admitted he was continuing to receive payments from former clients (App. P).

That report fails to comply with Title 5, Appendix 4, Section 102(a)(1)(A), (7)(C) requiring full and complete disclosure of the source, type, and amount or value of income from any source other than from current employment by the United States Government.

In *Re Cement Antitrust Litigation (MDL No. 296),* 688 F.2d 1297, 1308 (9th Cir. 1982) this circuit required disqualification of a judge with a financial interest in a party under 28 U.S.C, 455(b), whether or not the outcome of the proceedings could have any effect on the interests.

Petitioner asked district court to order Judge Pregerson to disclose the source, type and amount or value of income from his former clients (28 U.S.C. 1361; Title 5, U.S.C. App. 4, Section 102). Judge Morrow denied the motion for failure to have the very evidence the court was asked to obtain (App. O).

Fallini v. Hodel, 783 F.2d 1343 (9th Cir. 1986) said mandamus relief is available to compel U.S. officers of to perform a duty (28 U.S.C. 1361) (1345). Although *pro se* Petitioner did not deem her district court motions "mandamuses" she did ask that U.S. officers be made to perform their duties.

Petitioner asked district court to stay the proceedings while the Judicial Conference investigated the discrepancies in Judge Pregerson's Financial Disclosure Report. In an unsigned minute order Judge Morrow said Petitioner failed to produce evidence that the Judicial Conference or Attorney General has initiated proceedings against Judge Pregerson (App.N). Petitioner fails to understand how her entitlement to an impartial decision maker is dependent on how quickly the Government acts on her inquiry.

Judge Morrow's minutes appear that she is advocating for her colleague. Or being a new appointee, she may be too timid to

render a just decision that may discredit her coworker. If this Court were to make a clear and definite statement as to district court's power to compel compliance with the Ethics in Government Act, it would enable judges to more easily sit in judgment of their peers.

This Court should send a clear message to district court judges, that no matter who they may still be receiving payment from, they have a duty, even to *pro se* litigants, to afford them a fair and just adjudication of their claims by complying with Recusal laws and the Ethics in Government Act.

Petitioner is both disabled and in *pro se*. She had requested legal representation at both the district and appellate court levels (App. F and H), but was denied both requests. In the very least district court should have provided an impartial decision-maker.

In *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988) this Court deemed a judge's failure to excuse himself "inexcusable" (869). It found vacatur the proper remedy.

In light of the fact that Safeco already defaulted and Petitioner's injuries are over fourteen years old, she respectfully requests this Court rule on the merits and charge Safeco with a default plus compound interest to date. In *NAACP v. Alabama*, 377 U.S. 288 (1964) this Court ruled on the merits of a case that had bounced around the courts for eight years.

THE COURT BELOW HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDING, AND SANCTIONED SUCH A DEPARTURE BY A LOWER COURT AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISION CONCERNING:

FEDERAL JURISDCITION UNDER 42 U.S.C. 1983,
THE DECLARATORY JUDGMENT ACT,
ARTICLE III STANDING VS. APPLICATION,
UNREVIEWED MINISTERIAL ACTS VS JUDGMENTS UNDER *ROOKER/FELDMAN*,
DENYING *PRO SE* LITIGANTS LEAVE TO AMEND,
RECUSAL, and
EVIDENCE MEANT TO DEFEAT JURISDICTION

The Ninth Circuit decision, that district court did not have jurisdiction over the civil rights action is in direct conflict with decisions of this Court and other circuits (42 U.S.C. 1983).

This Court paved the way for suits against court personnel when it determined in *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978) that the First Amendment was adopted to protect discussion of governmental affairs, including the operation of the courts, and judicial conduct of judges (839).

Prior to her suit in federal district court, Petitioner appealed the vexatious litigant order and Sloan's discriminatory failure to Enter Safeco's Default to state appellate courts. The Vexatious Litigant order imposed a $10,000 security and CCP 904.1 permits an immediate appeal of matters involving $5000 or more.

In *Scott v. Flowers*, 910 F.2d 201 (5th Cir. 1990) a justice of the peace brought a First Amendment case against a state commission. The Fifth Circuit held that federal district court would have lacked jurisdiction if plaintiff had deliberately by-passed state court review (206). Petitioner did not by-pass state court review.

In *Frazier v. East Baton Rouge Parish School Board*, 363 F.2d 861 (5th Cir. 1966) when plaintiff by-passed review by this Court, of a state administrative action, district court had no jurisdiction (862). Petitioner did not by pass this Court's review of her constitutional claims, but her petitions were returned (App. K).

In *Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983) the Fifth Circuit held "The right to access to courts is basic to our system of government... it is one of the fundamental rights protected by the constitution"(971). It qualifies that access be "adequate, effective and meaningful". Interference with the right of access to court gives rise to a 1983 claim (972).

To ignore Sloan's violation of Petitioner's civil rights, under color of state law is to turn a blind eye to the reason 42 U.S.C. 1983 came into existence. It is to grant citizens a remedy when the state, or its officials violate their constitutional rights (First, Fifth, Seventh, Eighth, and Fourteenth Amendments).

In *Zinermon v. Burch*, 494 U.S. 113 (1989), this Court said

> "a plaintiff may bring suit for state officials' violation of his rights because due process bars certain arbitrary wrongful government action. He may invoke 1983 regardless of any state tort remedy available (125). A constitutional violation actionable under 1983 is not complete when the deprivation occurs, it is not complete unless and until states fail to provide due process (126).

The state chose *not* to provide due process on Petitioner's claims.

The Ninth Circuit decision, denying Declaratory and Injunctive relief, is in conflict with decisions of this Court and other courts of appeals.

The purpose of Petitioner's suit was to obtain declarations that Sloan applied the Vexatious Litigant Statutes unconstitutionally, that Safeco defaulted, and that the statutes are unconstitutional. She prayed for a remedy in the amount of Safeco's default plus compound interest from May 7, 1997.

The Ninth Circuit likened Petitioner's case to *Branson v. Nott*, 62 F.3d 287 (9th Cir, 1995). They differ in material ways:

1. Branson failed to serve one defendant and his default was properly denied (290). Petitioner properly served Safeco, but their default was discriminatorily denied by default clerk Sloan.

2. Branson's state court of appeals decision affirmed the appeal (290). Petitioner's state court of appeals dismissed her as a vexatious litigant and never addressed the default.

3. Branson failed to swear as to the truth of his pleadings (291). Petitioner filed a verified complaint and supported other documents with declarations and verifications.

4. Branson asked that district court "require state clerk to enter default judgment and set hearing for default" (291-292). Petitioner sought a declaration that Safeco defaulted and against Safeco only, she sought monetary relief equal to the value of their default plus compound interest.

Demrey v. Kupperman, 735 F.2d 1139, 1148 (9th Cir. 1984) tells us that the Eleventh Amendment bars suit that would restrain state government from acting or compel it to act. Thus the remedy Branson seeks is not allowed.

Petitioner however is entitled, under 28 U.S.C. 2201 and 2202, to a declaration that clerk Sloan violated her constitutional right to be treated as an equal to parties represented by counsel who seek Entry of a Default under Code of Civil Procedure 585.

In *Alsager v. District Court of Polk Cty., Iowa (Juv. Div.)*, 518 F.2d 1160 (8th Cir. 1975) the Eighth Circuit found jurisdiction when parents brought a federal civil rights action seeking a declaratory judgment that their constitutional rights were violated by state court proceedings (1162). Petitioner seeks declarations that Sloan and the Vexatious Litigant Statutes violated her rights.

In *Lake Carrier's Association v. MacMullan*, 406 U.S. 498,

510 (1972) this Court stated as to suits seeking declaratory relief: "In thus [establishing jurisdiction for the exercise of] federal jurisdiction power, Congress imposed the duty upon *all* levels of the federal judiciary to give due respect to a suitor's choice of a federal forum for the hearing and decision of his federal constitutional rights."

Petitioner is also entitled to a monetary judgment in the amount of Safeco's default plus compound interest. The Seventh Circuit in *Freed v. Travelers*, 300 F.2d 395, 399 (7th Cir. 1962) held that district court may grant substantive relief in the form of a monetary judgment in a declaratory judgment proceeding.

The Seventh Circuit elaborated more recently in *Illinois Phyicians Union v. Miller*, 675 F.2d 151 (7th Cir. 1982) saying district court has authority to fully adjudicate the rights of all parties before it ... district court may grant monetary relief in declaratory judgment proceedings ...

The Ninth Circuit decision, refusing resolution of Petitioner's appeal because it would require examination of the Vexatious Litigant Statutes "as applied" to Petitioner, conflicts with decisions of this Court and other courts of appeal.

Petitioner suffered actual harm when Sloan discriminatorily denied her Entry of Safeco's Default. She suffered further damage when state appellate courts used the Vexatious Litigant Statutes to deny review of the statutes' unconstitutionality and of Sloan's acts.

When she brought her action to federal district court, under the Declaratory Judgment Act (28 U.S.C. 2201 and 2202), she had to demonstrate that she had standing under Article III of the Constitution of the United States. If the unconstitutional statutes had not been "applied" to Petitioner, she would lack standing to bring suit for declaratory and injunctive relief.

In *J.N.S., Inc. v. State of Ind.*, 712 F.2d 303, 305 (7th Cir. 1983) the Seventh Circuit elaborated saying, "Article III limits exercise of judicial power to cases or controversies; case or controversy requirement applies to declaratory judgments; federal court can pass on constitutionality of statute *only* if interests of litigant requires use of this judicial authority against actual interference with their rights". Petitioner's rights were interfered with by denial of entry of Safeco's default and review thereof.

In *Secretary of State of MD. v. J. H. Munson Co.*, 467 U.S. 947 (1983) to satisfy Article III case or controversy requirements, the party must assert their own legal rights and interests and cannot rest his claim to relief on legal rights or interests of third parties (955). If Petitioner were to simply challenge the constitutionality of the statutes without demonstrating how they interfered with her rights, she would fail to demonstrate standing as required by the Declaratory Judgment Act (28 U.S.C. 2201 and 2202). But when she demonstrated interference with her rights, this Circuit refused jurisdiction saying "resolution would require examination of Vexatious Litigant States as applied to Wilson".

As long ago as 1917 this Court explained in *Mountain Timber Co. v. Washington*, 243 U.S. 219, 221 (1917) that the question of whether a state law deprives of a right secured by the constitution, depends not on how the law is characterized, but upon its practical effect and operation. But when Petitioner described the effect and operation of the Vexatious Litigant Statutes, federal courts denied her jurisdiction.

In *Boddie v. Connecticut*, 401 U.S. 371 (1971) this Court found that a statute may be held unconstitutionally invalid as applied when it operates to deprive an individual of a protected right (379). This Court recognized that a procedure valid on its face may offend due process because it operates to foreclose a particular party's opportunity to be heard (380). But when Petitioner described how she was foreclosed from presenting her case by operation of the Vexatious Litigant Statutes, the Ninth Circuit used her description as an impediment to jurisdiction.

Ninth Circuit courts frequently are called upon to review statutes as they are "applied". The court below found jurisdiction in *Lind v. Grimmer*, 30 F.3d 1115 (9th Cir. 1994) when a publisher challenged a state statute. District court found it unconstitutional on its face and "as applied (1123). Judge Canby served on both *Lind* and Petitioner's panels but rendered disparate decisions.

California's Central district court took jurisdiction in *Timlin v. Myers*, 980 F.Supp. 1100 (C.D.Cal. 1997) when a federal judge mounted a facial and as applied challenge to a statute that reduced his retirement benefits. Citizens' claims are no less important.

Petitioner is a *pro se* litigant without a law degree. She is not allowed to represent a class of parties similarly injured. She

did however, attach to her complaint a list of 331 other parties victimized by the Vexatious Litigant Statutes and described other litigants' cases in her Notice of Related Cases (App. L4). There are currently five challenges to the Vexatious Litigant Statutes pending in federal district courts[9].

The Ninth Circuit decision, affirming the district court dismissal which interpreted the *Rooker/Feldman* doctrine to preclude federal district court jurisdiction over decisions, determinations, and rulings that are not judicially reviewed conflicts with decisions of this Court and other courts of appeal

District court relied on the *Rooker/Feldman* doctrine and its progeny to deny Petitioner jurisdiction over her claims. It found that federal review of state court decisions may only be had by writ of certiorari to the United States Supreme Court (28 U.S.C. 1257) (App.H). It came to that conclusion despite its knowledge that on February 3, 1998 this Court returned Petitioner's January 27, 1998 petition for writ of certiorari, with directions to approach it via lower federal court (28 U.S.C. 1254) (App. K).

Had state appellate courts taken jurisdiction and addressed in a judicial decision, the issues Petitioner presented, this Court could have reviewed those judgments under 28 U.S.C. 1257.

In relying on *Rooker Feldman* district court failed to discern between a fully reviewed judicial decision and an unreviewed discriminatory ministerial act by state default clerk Sloan.

The Ninth Circuit's own decision in *Allah v. Superior Court of the State of Cal.*, 871 F.2d 887 (9th Cir.-1989) permits review of rules promulgated in non-judicial proceedings (890). Petitioner challenges state statutes promulgated by the legislature. This fits *Allah's* criteria, and federal district court had jurisdiction.

District court stated a "litigant may not employ a federal civil rights action to overturn a state court judgment". But no judgment was the subject of Petitioner's complaint. She did not present to district court any judgment for review. She presented an unreviewed ministerial decision. State court lost jurisdiction to hear Safeco's August 15, 1997 Demurrer on May 7, 1997, when Petitioner submitted her Request for Entry of Default (App. L2).

W. A. Rose Co. v. Municipal Court, 176 Cal.App.2d 67; 1 Cal.Rptr. 49 (1959) held "subsequent untimely filing... did not

affect the duty of the clerk to enter default when requested, nor did they restore the jurisdiction to the court which was lost when default should have been entered" (72) the court had no power to make that order.

In *Centifanti v. Nix*, 865 F.2d 1422 (3rd Cir. 1989) the Third Circuit found that a declaratory judgment that rules are unconstitutional would not require the district court to review the state supreme court decision (1429).

Valenti v. Mitchell, 962 F.2d 288 (3rd Cir. 1992) the Third Circuit held that the *Rooker/Feldman* doctrine does not prevent federal district court from reviewing non-adjudicative or administrative acts, even of the high state court (297).

The Ninth Circuit decision, denying leave to amend is in conflict with decisions by this Court and other circuits.

In her opposition to defendants' 12(b) motions to dismiss, Petitioner requested to be advised of any deficiencies in her complaint and to be granted leave to amend.

The Ninth Circuit held in *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) that this Court instructs it to liberally construe *pro se* litigants' inartful pleading, particularly in civil rights cases. Before dismissing a *pro se* complaint the district court *must* provide the litigant with notice of the complaint's *deficiencies* in order to ensure they use the opportunity to *amend effectively*.

But the court not only failed to advise Petitioner of any deficiencies, he failed to hear oral argument, he denied leave to amend and he threatened to sanctions if Petitioner brought post judgment motions (App. H).

In *Foman v. Davis*, 371 U.S. 178, 182 (1962) this Court called for leave to amend to be freely given when justice so requires [FRCP 15(a)].

The district court decision faulted Petitioner for not complying with codes on which she did not rely, then it faulted her for not presenting the very evidence she asked it to secure.

On November 23, 1998 Petitioner was told presiding district court Judge Dean D. Pregerson had represented the insurer. He had already dismissed her case on September 29, 1998. Further research revealed a mere 18 month time span between his law

firm's representation and adjudication of Petitioner's case (App.S).

Judge Pregerson relied on Petitioner's continued ignorance of his former relationship with defendant Safeco and failed to either advise Petitioner or recuse himself. *Liteky v. United States*, 510 U.S. 540, 547 (1994) imposed the responsibility of recusal on a judge himself, when his impartiality might reasonably be questioned [28 U.S.C. 455(a)].

November 30, 1998 Petitioner filed a Motion to Disqualify Judge Pregerson under 28 U.S.C. 455(a) due to the appearance of partiality (App. T). He refused again to disqualify himself and the motion was assigned to Judge Margaret M. Morrow. She held in an unsigned minute order that Petitioner failed to meet 28 U.S.C. 144 and 455(b) criteria (App.R). She faulted Petitioner for failing to submit a Section 144 affidavit.

Petitioner's motion was based on the insurer's business practice of victimizing the most vulnerable members of society; perpetrating fraud to defeat their just entitlement; forcing them into financial ruin by withholding court ordered benefits any reasonable person would find reprehensible[5] and the Judge's similar behavior when he defended the insurer from wives and children of plane crash decedents[6].

Petitioner asked the court to order Judge Pregerson to fully disclose his continuing income from former clients (Title 5, App. 4, Section 102). Judge Morrow denied Petitioner's motion for not having the very information she asked the court to secure.

But Judge Morrow misconstrued facts and the basis of every motion Petitioner submitted (App. N, O, Q, R). *Fallini v. Hodel*, 783 F.2d 1343 (9th Cir. 1986) the court abuses its discretion when its decision is based on clearly erroneous factual findings or incorrect legal theory (1345).

When she sought mandamus relief from the Ninth Circuit, it found her case didn't warrant so extraordinary a remedy (App. A)

This Court should send a clear message to lower federal courts, that no matter who a judge once worked for, they have a duty even to *pro se* litigants, to afford them a fair and just adjudication of their claims, by complying with recusal laws (28 U.S.C. 2106).

If permitted to stand the Ninth Circuit decision would send a clear message that defendants may make false and misleading

statements to the court, and as long as they once employed the judge, they need not fear any repercussions.

The Ninth Circuit relies on prejudicial evidence, not properly before the court, in support of a 12(b) motion to dismiss; but failed to sanction it with a default judgment; is in conflict with decisions of this Court and the state high court

In their 12(b) motion to dismiss, Safeco claimed Petitioner was challenging issues that had already been litigated. They claimed workers' compensation had jurisdiction over Safeco's fraud, but fraud is an exception to workers' compensation exclusivity. They claimed there existed state court judgments on the issues Petitioner brought for adjudication.

If they were alluding to the Demurrer, they should have expressly mentioned it in their 12(b) motion. The superior court had already lost jurisdiction to rule on the Demurrer when Safeco's default should have been entered. *W. A. Rose Co. v. Municipal Court*, 176 Cal.App.2d 67; 1 Cal.Rptr. 49 (1959) held:

> "subsequent untimely filing... did not affect the duty of the clerk to enter default when requested, nor did they restore the jurisdiction to the court which was lost when default should have been entered. Certain proceedings subsequent to the time when the plaintiff was entitled to have default entered, did not validate an order which the court had not power to make" (72).

In 1995 in *People v. One 1986 Toyota Pickup*, 31 Cal.App. 4th 254; 37 Cal.Rptr.2d (Jan. 1995) the court held that under CCP 585, the entry of a default terminates a defendant's rights to take any further affirmative steps in the litigation. Furthermore Safeco made false claims to superior court to prevail in that hearing.

Petitioner challenged defendants to produce state court judgments on Sloan's acts and the constitutionality of the Vexatious Litigant Statutes, they could not and did not do so.

In conjunction with the 12(b) motions defendants relied on Safeco's Request for Judicial Notice, which had been rejected by district court for failure to comply with Local Rule 3.10.2. *Washington v. Official Court Stenographer*, 251 F.Supp. 945, 947 (E.D.PA 1966) held a motion to dismiss is not a proper vehicle for a determination of facts outside the complaint. In *Morris v. Myers*,

845 F.Supp. 750 (D.Or.1993) the court held that evidence outside the pleadings cannot normally be considered in deciding a 12(b)(6) motion to dismiss (755). District court judge knows this law and should have rejected the Request for Judicial Notice *sua sponte*.

Defendants did not file a Supplemental Excerpt of Record under Circuit Rule 30-1.6 with the court of appeals, containing any state court judgment, addressing Sloan's discriminatory decision, Vexatious Litigant Statutes unconstitutionality, or otherwise. Nor did Safeco cite an authority for making their Request for Judicial Notice a proper substitute for an Excerpt of Record. The papers had been rightfully rejected by district court. They should also have been rejected as being improper to support a 12(b) motion.

The Request for Judicial Notice, containing state court decisions, on other than the issues Petitioner brought for adjudication, was submitted simply to defeat federal jurisdiction.

As a *pro se*, if Petitioner does not know the proper way to present evidence, or the proper way to contest Safeco's false claims that are unsupported by evidence, the Ninth Circuit abdicated the duty it imposed on itself in *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990) to insure *pro se* litigants do not lose their right to a hearing on the merits of their claims due to ignorance of technical procedural requirements.

The district court judge ignored the truth and ruled in favor of his former client. Federal Rule of Evidence 102 tells courts to construe rules to secure fairness, truth and justice. Now we have reason to believe that Judge Pregerson may remain on the insurer's payroll and should have recused himself. His former association with them alone is reason for recusal.

The Ninth Circuit derived that Petitioner's claims were without merit, based only on Safeco's false claims and misleading evidence. Attorneys Bennet and Je echoed those claims and in so doing either failed to make reasonable inquiry (FRCP 11(b)(3)] or are aiding and betting Safeco in a continued pattern of corruption[8].

The court of appeals did not and could not cite evidence of a state court judgment on either of the two issues Plaintiff brought to district court (App. B): The constitutionality of the Vexatious Litigant Statutes and state court clerk Sloan's discriminatory denial of Entry of Safeco's Default. Nevertheless district court and the Ninth Circuit denied jurisdiction based on their erroneous

conclusions that such phantom judgments supposedly exist.

Safeco had no valid defense for perpetrating fraud against Petitioner. It is obvious they preferred to avoid a jury trial on the merits at all costs, because their untimely Demurrer was based on false and misleading claims.

This Court said in *Southern Pacific Co. v. Schuyler,* 227 U.S. 601, 611 (1913) it

> "ordinarily does not review the findings of fact, but when a federal right had been denied as a result of a fact which is without support in the evidence... it is incumbent upon us to analyze the evidence to the extent necessary to give Plaintiff in error the benefit."

If this court were to review the evidence it would find no valid judgment exists to defeat federal district court jurisdiction. All the smoke and mirrors in Safeco's false claims and Request for Judicial Notice can only be interpreted as the type of scheme to deprive the court of jurisdiction and devise a plan of obstruction condemned in *Chambers v. NASCO,* 501 U.S. 32, 41 (1991).

Petitioner asked the Ninth Circuit to impose a default judgment against Safeco under *Chambers* and *Televideo Systems, Inc. v. Heidenthal,* 826 F.2d 915 (9th Cir. 1987) courts have inherent equitable power to enter default judgments... for elaborate schemes of perjury and willful deceit on the court (FRCP 55). The court of appeals never addressed her request.

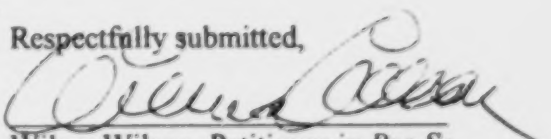
Petitioner reiterates her request that this Court use its inherent power to impose a default judgment on Safeco for their false and misleading statements meant to deceive the court and obstruct justice.

In the alternative Petitioner requests that the Court rule on the merits and enter judgment in the amount of Safeco's May 7, 1997 default, plus compound interest or remand to a new judge.

CONCLUSION

For the reasons stated above, a writ of certiorari should be granted to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,



Wilma Wilson, Petitioner in *Pro Se*

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

A

FILED September 17, 1999

WILMA WILSON,	)
	) No. 99-71101
Petitioner,	)
	) DC# CV-98-3693-DDP
v.	) Central California
	)
UNITED STATES DISTRICT COURT FOR THE CENTAL DISTRICT OF CALIFORNIA,	) ORDER
	)
Respondent,	)
	)
STATE OF CALIFORNIA: et al.,	)
	)
Real Parties in Interest.	)
	)

Before: FERNANDEZ, TASHIMA and GRABER, Circuit Judges

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. Accordingly, the petitioner is denied.

Petitioner's motion to stay is denied as moot.

B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NOT FOR PUBLICATION
FILED August 24, 1999

WILMA WILSON,	)
	)
Plaintiff-Appellant	) CA No. 98-56904
	) DC No. CV-98-03693-
v.	) DDP
	)
STATE OF CALIFORNIA; RONALD M. GEORGE, Hon., Chief Justice, California Supreme Court; PAUL A. TURNER, Presiding Justice, California Court of Appeal, Second District, Fifth Division; PATRICIA QUINN, Deputy Clerk, California Supreme Court; MICHAEL J. FARRELL, Lost Angeles County Superior Court Judge; EVA SLOAN, Default Clerk, Los Angeles Superior Court; SAFECO INSURANCE COMPANY,	) MEMORANDUM [1]
Defendants-Appellees	)

Appeal from the United States District Court
For the Central District of California
Dean D. Pregerson, District Judge, Presiding
Submitted July 30, 1999 [2]

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

[2] the panel unanimously finds this case suitable for decision without oral argument pursuant to Fed. R. App. P. 34(a)(2).

BEFORE: CANBY, O'SCANNLAIN, and SILVERMAN, Circuit Judges .

Wilma Wilson appeals pro se from the district court's dismissal for lack of subject matter jurisdiction of her 42 U.S.C. 1983 action. We review de novo, see Crist v. Leippe, 138 F.3d 801, 803 (9th Cir. 1998), and affirm.

Federal district courts lack jurisdiction to review final state court judgments even when the challenge to the state court decision involves federal constitutional issues. Branson v. Nott, 62 F.3d 287, 291-92 (9th Cir. 1995). Resolution of Wilson's constitutional claims would require the court to examine the California vexatious litigant statute as applied to her. Accordingly, the district court lacked subject matter jurisdiction to review Wilson's impermissible collateral attack on a prior California state court decision. See id. at 291. We also conclude that the district court properly denied Wilson leave to amend because such leave would be futile. See Pink v. Modoc Indian Health Project, Inc., 157 F.3d 1185, 1189 (9th Cir. 1998).

We reject Wilson's remaining claims as without merit.

AFFIRMED.

C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NOT FOR PUBLICATION
FILED August 3, 1999

WILMA WILSON,	)
	)
Plaintiff-Appellant	) CA No. 98-56904
	) DC No. CV-98-03693-
v.	) DDP
	)
STATE OF CALIFORNIA; RONALD M. GEORGE, Hon., Chief Justice, California Supreme Court; PAUL A. TURNER, Presiding Justice, California Court of Appeal, Second District, Fifth Division; PATRICIA QUINN, Deputy Clerk, California Supreme Court; MICHAEL J. FARRELL, Lost Angeles) County Superior Court Judge; EVA SLOAN, Default Clerk, Los Angeles Superior Court; SAFECO INSURANCE COMPANY,	) ORDER
Defendants-Appellees	)

Before: O'SCANNLAIN, RYMER and SILVERMAN, Circuit Judges

The memorandum disposition entered on June 16, 1999, is withdrawn.

NOT FOR PUBLICATION **D**
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED June 16, 1999

WILMA WILSON, *Plaintiff-Appellant* v. STATE OF CALIFORNIA; RONALD M. GEORGE, Hon. Chief Justice, California Supreme Court; PAUL A. TURNER, Presiding Justice, California Court of Appeal, Second District, Fifth Division; PATRICIA QUINN, Deputy Clerk, California Supreme Court; MICHAEL J. FARRELL, Lost Angeles) County Superior Court Judge; EVA SLOAN, Default Clerk, Los Angeles Superior Court; SAFECO INSURANCE COMPANY, *Defendants-Appellees*	) CA No. 98-56904) DC No. CV-98-03693-) DDP) MEMORANDUM [1]

Appeal from the United States District Court
For the Central District of California
Dean D. Pregerson, District Judge, Presiding
Submitted June 14, 1999 2

---

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

[2] the panel unanimously finds this case suitable for decision without oral argument./ See Fed. R. App. P. 34(a)(2).

BEFORE: O'SCANNLAIN, RYMER and SILVERMAN, Circuit Judges

Wilma Wilson appeals pro se from the district court's dismissal for lack of subject matter jurisdiction of her 42 U.S.C. 1983 action. We review de novo, see Crist v. Leippe, 138 F.3d 801, 803 (9th Cir. 1998), and affirm.

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We reject Wilson's remaining claims as without merit.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

E

FILED April 9, 1999

WILMA WILSON,	)
	) No. 98-56904
Plaintiff-Appellant,	)
	) DC# CV-98-3693-DDP
v.	) Central California
	)
STATE OF CALIFORNIA: et al.,	) ORDER
	)
Defendants-Appellees.	)
	)

Appellee Safeco's motion for reconsideration in part of the April 1, 1999 order is granted. Appellee Safeco's brief is now due May 10, 1999.

Appellant's motion to strike the answering brief of Appellee Farrell, et al., and any responsive filings shall be referred to the merits panel for resolution.

The optional reply brief is now due 14 days from service of Safeco's brief.

For the Court:
CATHY A. CATTERSON
Clerk of the Court
s/_____
Cole Benson
Deputy Clerk
Ninth Cir. R. 27-7/Appendix A,
General orders for the
United States Court of Appeals

F

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED January 22, 1999

WILMA WILSON,	)
	)
Plaintiff-Appellant	) CA No. 98-56904
	) DC No. CV-98-03693-
v.	) DDP
	)
STATE OF CALIFORNIA; et al.,	) ORDER
	)
Defendants-Appellees	)
	)

Before: KLEINFIELD and HAWKINS, Circuit Judges

Appellant's motion for appointment of counsel is denied because this appeal does not present "exceptional circumstances" warranting the appointment of counsel. *See* 28 U.S.C. 1915(e)(1); *Wilborn v. Escaldereon*, 789 F.2d 1328 (9th Cir. 1986). No motions for reconsideration, clarification, or modification of this denial shall be filed or entertained.

The briefing schedule shall proceed as follows: the opening brief is due February 26, 1999; the answering brief is due March 29, 1999; the optional reply brief is due within 14 days of service of the answering brief.

Appellees' request for judicial notice is granted.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
ENTERED September 30, 1998

G

Wilma Wilson,	) Case No. CV 98-56904 DDP
	) (RZx)
Plaintiff	)
v.	) JUDGMENT
	)
	)
THE STATE OF	)
CALIFORNIA, et al.,	)
	)
Defendants.	)
	)

Pursuant to the Order of the Court Dismissing the Complaint For Lack of Subject Matter Jurisdiction Without Leave to Amend, and adopting the same as the facts and conclusions of law herein,

IT IS ORDERED AND ADJUDGED that Judgement shall be entered dismissing the complaint and action for lack of subject matter jurisdiction as to all defendants served and unserved.

Dated: 9-28-98

s/_____
DEAN D. PREGERSON
United States District Judge

H UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ENTERED September 30, 1998

Wilma Wilson,	) Case No. CV 98-56904 DDP (RZx)
	)
Plaintiff	) ORDER
v.	) DISMISSING THE COMPLAINT
	) FOR LACK OF SUBJECT MATTER
THE STATE OF	) JURISDICTION WITHOUT LEAVE
CALIFORNIA, et al.,	) TO AMEND
	)
Defendants.	) DENYING MTITON TO REQUIRE
	) SECURITY AND PERMISSION FOR
	) FILE PAPERS AS MOOT
	)
	) DENYING PLAINTIFF'S
	) APPLICATION FOR
	) APPOINTMENT OF COUNSEL

THIS MATTER COMES BEFORE THE Court on the defendants' motions to dismiss, and on the motion of defendant General Insurance Company, erroneously sued as Safeco Insurance Company (hereinafter "General/Safeco"), for a pre-filing order under Central District Local Rule 27A.

This lawsuit arises from an underlying state court action[1] in which the plaintiff, Wilma Wilson ("Wilson"), sued the State of California, the California Department of Industrial Relations, the California Workers' Compensation Appeals Board ("WCAB"). General/Safeco, Director of the Department of Industrial Relations, Lloyd Aubrey, Jr., WCAB Administrative Director Casey Young, WCAB Chief Supervisor Marl Kahn, California Workers' Compensation Judge Stanley S. Feinstein, WCAB Court Reporter

[1] Wilson v. State of California, et al., LC040186 (Sup. Ct. filed, Feb. 14, 1997).

Ileane Miller, and Attorney Doris Nistler. (See Def. General/Safeco's Request for Judicial Notice ("Def.'s RJN") Ex. 25.)[2] the state court action asserts federal civil rights violations and several state law claims arising from the trial of the plaintiff's worker's compensation appeal in 1992.

The state court action represents the plaintiff's fifth lawsuit arising from the adjudication of the worker's compensation case. (See Def's RJN Exs. 1-32.) On a motion by all defendants in the state court action, the superior court issued an order under section 391 of the California Code of Civil Procedure, declaring the plaintiff a vexatious litigant, requiring the plaintiff to file a bond in order to continue the action, and prohibiting the plaintiff from filing any new litigation in propria persona against the same defendants without first obtaining permission from the presiding judge in the court where the action is filed.

The plaintiff posted the required bond, and the state court action proceeded to the merits. In July 1997, the superior court sustained the demurrers of all defendants without leave to amend. (See Def's RJN Ex. 7.) The plaintiff appealed the demurrers. Because the plaintiff had been declared a vexatious litigant, the California Court of Appeal ordered the plaintiff to show in writing that the appeals were not brought for the purpose of harassment and delay under Section 391.7 of the California Code of Civil Procedure. (See Def.'s RJN Ex. 29) In October 1997, the court of appeal found that the appeals were "filed for purpose of harassment" and dismissed them. (See Def.'s RJN Ex. 30.) The plaintiff's petition for review was denied by the California Supreme Court on February 18,1998. (See Def.'s RJN Ex. 31.)

The plaintiff filed this action on May 12, 1998, naming the following defendants: State of California, Chief Justice of the California Supreme Court Ronald M. George, California Court of Appeal Justice Paul A. Turner, California Supreme Court Deputy Clerk Patricia Quinn, Los Angeles County Superior Court Judge Michael J. Farrell, Superior Court Default Clerk Eva Sloan, and General/Safeco.

The complaint alleges twenty-three causes of action under

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[2] The Court has considered the plaintiff's motion to strike the request for judicial notice. The motion is DENIED.

42 U.S.C. 1983 based on the First, Seventh, Eighth, and Fourteenth Amendments. The complaint asserts that the application of the California vexatious litigant statute violated the plaintiff's constitutional rights by preventing the entry of a default judgment against General/Safeco during the pendency of its motion to have the plaintiff declared a vexatious litigant.

This order disposes of the following motions: (1) motion to dismiss by defendants Michael J. Farrell and Eva Sloan, filed May 21, 1998; (2) motion to dismiss by defendants State of California, Ronald M. George, Paul A. Turner and Patricia Quinn, filed June 15, 1998; (3) motion to dismiss by defendants General/Safeco, filed June 26, 1998; and (4) motion to require security and permission to file papers by defendant General/Safeco, filed June 25, 1998. The Court has considered the plaintiff's written oppositions to these motions, as well as the moving parties' replies. The Court finds these matters suitable for decision without oral argument.

Having reviewed the contentions of the parties in light of the applicable legal authorities, the Court finds that it is without subject matter jurisdiction over this action and grants the motions to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure without leave to amend. General/Safeco's motions to require security and permission to file papers is denied as moot without prejudice to renewal of the motion if necessary.

I. JURISDCITIONAL BARS TO THIS ACTION

A. Eleventh Amendment Bars This Action Against the State of California and the Individual Defendants Named in Their Official Capacities

The Eleventh Amendment bars individual from bringing civil suits which seek either damages or injunctive relief against a state. See Franceschi v. Schwartz, 57 F.3d 828, 831 (9th Cir. 1995). This Court is therefore without subject matter jurisdiction over the plaintiff's claims against the State of California.

The Court has considered the plaintiff's request for leave to amend to add California Attorney General Dan Lungren in his official capacity in place of the State of California. Although amendment is liberally permitted under the Federal Rules, leave to amend will not be granted where no amendment can cure the

deficiencies of the complaint. As is discussed in more detail below, this complain is jurisdictional deficient for reasons other than the State of California's Eleventh Amendment Immunity, and these deficiencies cannot be cured by amendment. Leave to amend to name Attorney General Lungren is therefore DENIED.

B. The *Rooker/Feldman* Doctrine Bars Federal District Court Review of a State Court Order

The federal district court, "as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings." Worldwide Church of God v. McNair, 805 F.2d 888, 90 (9th Cir. 1986) (citing District of Columbia court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923)). This doctrine, known as the Rooker/Feldman doctrine applies even when the challenge to the state court decision involves federal constitutional issues. See McNair, 805 F.2d at 891. Federal review of state court decisions may only be had by writ of certiorari in the United States Supreme Court. See id. At 890: 28 U.S.C. 1257. Under this doctrine, a dissatisfied state court litigant may not employ a federal civil rights action to overturn a state court judgment, even if that judgment resulted from a violation of the federal Constitution. The federal constitutional defects in the state court proceedings must be presented to the state appellate courts. See Branson v. Nott, 62 F.3d 287, 289 99TH Cir. 1995) (holding under Rooker/Feldman doctrine that federal district court had no jurisdiction over claim that state court's procedures result in denial of " 'right of entry of default' "). There is an exception to the Rooker/Feldman doctrine for generalized constitutional challenges of state statutes or court rules, where the adjudication of the constitutional challenge does not require review of a state court decision in a particular case. . See McNair, 805 F.2d at 891. "This distinction between a permissible general constitutional challenge and an impermissible appeal of a state court determination may be subtle, and difficult to make." See id. The distinction is made by asking whether the constitutional claims presented to the district court are "inextricably intertwined" with the state court's ruling in a particular judicial proceeding involving the plaintiff. See id. (citing Feldman, 460 U.S. at 483-83 n.16). If the plaintiff's general

challenge requires the district court to go beyond mere review of the state statute as promulgated, to an examination of the statute as applied by the state court to the particular factual circumstances of the plaintiff's case, then the district court lacks jurisdiction. See id. At 892.

The plaintiff asserts in her opposition to the instant motions that her complaint raises a general constitutional challenge, and therefore does not constitutes impermissible federal district court review of the state court order. An examination of the complaint and the relief sought therein, however, reveals that adjudication of this case would require an examination of the vexatious litigant statute as applied to the plaintiff. See Brown v. Board of Bar Examiners, 623 F.2d 605, 610 (9th Cir. 1980). The complaint seeks to overturn the state court's denial of the plaintiff's application for a default judgment against defendant General/Safeco during the pendency of General/Safeco's vexatious litigant motion. The plaintiff asks that this Court (1) declare that the state statute under which the plaintiff was found to be a vexatious litigant is unconstitutional, (2) enjoin enforcement of the statute prospectively, (3) declare that General/Safeco defaulted in the state court action, and (4) conduct a jury trial on the plaintiff's entitlement to medical expenses arising after General/Safeco's purported default. (See Complaint at 25:10-28:9.) Although the complaint bears "superficial indicia of a general constitutional attack," the claims pleaded therein are inextricably intertwined with the specific application of the vexatious litigant statue by the state court.[3] See Brown v. Board of Bar Examiners, 623 F.2d at 610. This Court is therefore without subject matter jurisdiction over the complaint. This action is DISMISSED.

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[3] The plaintiff 's reliance on the Eleventh Circuit's decision in Wood v. Orange county, 715 F.2d 1543 (11th Cir. 1983) is of a Florida statute allowing liens to be entered against indigent criminal defendants for the value of legal services provided by the state public defender. See id. At 1544. The Eleventh circuit held that the Rooker/Feldman doctrine did not bar the constitutional challenge because the Florida courts required indigent criminal defendants to waive notice of the lien proceedings, thus depriving them of a reasonable opportunity to raise the federal constitutional

II. DISMISSAL IS WITHOUT LEAVE TO AMEND

Any amendment of the complaint to state a general constitutional challenge would be futile. California's vexatious litigant statute is not facially unconstitutional. . See Wolfgram v. Wells Fargo Bank, 61 Cal.Rptr.2d 694 (Ct. App.), cert denied, 118 S. Ct6. (1997). A state legislature does not violate the federal constitution by codifying the procedures by which state courts may curb abuse of judicial process by the filing of harassing actions. Due process is not offended by the vexatious litigant rule that provides notice and opportunity to be heard. Cf. DeLong v. Hennessey, 912 F.2d 1144, 1147-48 (9th Cir. 1990). California's vexatious litigant statute provides these safeguards. See Cal. Code Civ. Proc. 391.1, 391.2, 391.3. To the extent that the plaintiff alleges that the pre-filing order imposed on her was overbroad, this allegation attacks the application of the statute and is beyond this Court's jurisdiction under Rooker/Feldman, as discussed above. Because California's vexatious litigant statute meets the requirements of due process, any amendment of the instant complaint to state a general constitutional challenge independent of the application of the statutory procedure to the plaintiff would be futile. Leave to amend is therefore DENIED.

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challenge before state court. See id. At 1547-48. Here, however, the plaintiff had notice and an opportunity to be heard before the state court declared her a vexatious litigant. (See Def's RJN Ex. 26 at Bates 413, lines 8-10.) the California vexatious litigant statute requires such notice and opportunity to be heard. See Cal. Code Civ. Proc. 391.1, 391.2, 391.3. The plaintiff, unlike the plaintiff in Wood, had an opportunity to present her constitutional arguments to the state court. The Rooker/Feldman bar applies not only to issues that the plaintiff actually raised in the state court litigation, but also to issues that the plaintiff failed to raise in the state court litigation when presented with a reasonable opportunity to raise them. See Feldman, 450 U.S. at 482 n.16; Wood, 715 F.2d at 1546-47. Federal constitutional claims that are inextricably intertwined with a state court proceeding must be raised in that proceeding or forfeited. See Feldman, 460 U.S. at 482 n.16.

III. GENERAL/SAFECO'S MOTION TO REQUIRE SECURITY AND PERMISSION TO FILE PAPERS

General/Safeco has moved under Central District Local Rule 27A for an order finding that the plaintiff has abused this Court's process and is likely to continue such abuse unless protective measures are taken. In addition, General/Safeco seeks an order requiring the plaintiff to post a bond of $35,000, and prohibiting the plaintiff from filling additional papers in this action without permission from the Magistrate Judge, and prohibiting the plaintiff from filing any pleading in another action naming the defendants without permission from the presiding judge.

This Court has previously admonished thee plaintiff that she risks sanctions by repeatedly filing actions that attempt under various guises to relitigate the state courts' adjudication of her workers' compensation appeal. (See Order of Dismissal, Wilson v. Workers' Compensation Appeals Board, CV 93-3119 LGB (Ex) (C.D. Cal., filed Aug. 31, 1995, affirmed, 34 F.3d 1075 (table), 1994 WL 465837 (9th Cir. 1994), cert. denied, 115 S. Ct. 2249 (1995); Report and Recommendation of A United States Magistrate Judge & Order Adopting Report and Recommendation of Magistrate Judge, Wilson v. State of California, et al., CV 95-5593 LGB (RMC) (C.D. Cal., filed Mar. 27, 1996 & Apr. 9, 1996, respectively); Order to Show Cause Re: Dismissal Under Rooker/Feldman Doctrine and Statute of Limitations and For Sanctions Under Fed. R. Civ. P. 11, Wilson v. State of California, et al., CV 96-5536 LGB (RC) (C.D. Cal., filed Aug. 28, 1996).)

Having dismissed this action without leave to amend, the Court DENIES General/Safeco's Local Rule 27A motion as moot. This denial is without prejudice to a renewal of General/Safeco's motion is ht event that plaintiff files post-judgment motions under this case number, or in the event that the plaintiff files a new action against the defendants named in this action. The plaintiff is again admonished that abuse of this Court's process will be met with monetary sanctions.

IV. APPLICATION FOR APPOINTMENT OF COUNSEL

In her opposition to General/Safeco's motion to require

security and permission to file papers, the plaintiff requests appointment of counsel. The Court construes this as an application for appointment of counsel under 28 U.S.C. 1915(e)(1), which provides that "(t)he court may request an attorney to represent any person unable to afford counsel" in proceeding in forma pauperis.

The district court may appoint counsel under 1915(e)(1) only in exceptional cases. Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). A finding of exceptional circumstances requires an evaluation of two factors: 1) the likelihood of success on the merits; and 2) the ability of the litigant to articulate his claims pro se in light of the complexity of the legal issues involved.

Neither factor is present here. The Court has concluded above that the plaintiff's as-applied constitutional attack on the vexatious; litigant statute is outside the subject matter jurisdiction of this Court, and that amendment to assert a facial challenge would fail to state a claim upon which relief could be granted. The first Terrell is thus absent. As to the second factor, the plaintiff has demonstrated in her numerous filings in this Court that she is fully able to articulate her claims. The second Terrell factor is also absent.

In light of the foregoing the application for counsel under 1915 is DENIED.

V. CONCLUSION

This action is DISMISSED for lack of subject matter jurisdiction without leave to amend.

The motion of defendant General/Safeco to require security and permission to file papers is DENIED as moot without prejudiced to renewal of the motion if necessary.

The plaintiff's application for appointment of counsel is DENIED.

Dated: 9-28-98

s/_____

DEAN D. PREGERSON
United States District Judge

UNITED STATED DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
NOTICE OF DOCUMENT DISCREPANCIES
FILED JUNE 29, 1998

To: X U.S. District Judge /□ U.S. Magistrate Judge DDP
From: Roxanne Horan, Deputy Clerk
Case No.: 98-3693 Case Title: Wilson v. State of CA
Document Entitled: Notice of Motion to Dismiss; Proposed Order; Request for Jud Not (Submitted by Def) Received Date: 6-25-98
Upon the submission of the attached document(s), it was noted that the following discrepancies exist:

_Local Rule 3.4.1 Document not legible
_Local Rule 3.4.9 Lacking name, address, phone number
_Local Rule 3.5.1 No copy provided for judge
_Local Rule 3.8.1 Proposed amended pleading not under separate cover
_Local Rule 3.10 Memorandum/brief exceeds 35 pages
XLocal Rule 3.10.2 Memorandum/brief exceeding 10 pages shall contain table of contents
_Local Rule 7.4 Written notice of motion lacking or timeliness of notice incorrect
_Local Rule 7.14.1 Statement of uncontroverted facts and or proposed judgment lacking
_Local Rule 7.14.2 Statement of genuine issues of material fact lacking
_Local Rule 7.18.1 Notice of other parties of ex parte application lacking
_Local Rule 9.8 Pretrial conference order not signed by all counsel
_FRCvP Rule 5(d) No proof of service attached to document(s)

ORDER OF THE JUDGE/MAGISTRATE JUDGE

X The document is NOT to be filed, but instead REJECTED, and is ORDERED returned to *counsel. *Counsel shall immediately notify, in writing, all parties previously served with the attached documents that said documents have not been filed with the Court.

Dated: 6-26-98 s/_____Dean D. Pregerson_____
U.S. District Judge/U.S. Magistrate Judge

UNITED STATES DISTRICT COURT J
CENTRAL DISTRICT OF CALIFORNIA
May 29, 1998
In Pertinent Part

Wilma Wilson, Plaintiff(s), v. The State of California Defendant(s).

Case #: CV 98-3693 DDP (RZx)
Order Re Transfer Pursuant To General Order 224
(Related Case)

DECLINATION

I hereby decline to transfer the above-entitled case to/from my calendar for the following reasons set forth: The low case number dealt with plaintiff's challenge to workers' compensation procedures. The high case challenges the constitutionality of Cal. CCP 391. The only similarity is the plaintiff.

Dated: 5/28/98 s/ Lourdes G. Baird, U.S. District Judge

REASON FOR TRANSFER AS INDICATED BY COUNSEL:

Case # 93-3119 LGB (Ex) and the present case:

X A. appear to arise from the same or substantially identical transactions, happenings or events.

TRANSFER ORDER DECLINED

NOTICE TO COUNSEL FROM CLERK:

Pursuant to the above transfer, any discovery matters that are or may be referred to a Magistrate Judge are hereby transferred from Magistrate Judge_____ to Magistrate Judge ____.

On all documents subsequently filed in this case, please substitute the initial __ after the case number in place of the initials of the prior judge, so that the case number will read CV __. This is very important because documents are routed to the assigned judges by means of these initials.

K SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

William K. Suter
Clerk of the Court

Area Code 202
479-3011

February 3, 1998

Ms. Wilma Wilson
5544 Calhoun Avenue
Van Nuys, CA 91401

Re: Wilma Wilson v. California, et al.

Dear Ms. Wilson:

The above-entitled petition for a writ of certiorari was postmarked January 27, 1998 and received February 2, 1998. The papers are returned for the following reason(s).

Your case must first be reviewed by a United States Court of appeals or by the highest state court in which a decision could be had. 28 USC 1254 and 1257.

It appears as though the Supreme Court of California did not consider your petition. Also enclosed is check number 102, dated January 27, 1998, in the amount of $300.

Sincerely,
William K Suter, Clerk
By:
s/_____
Ruth Jones
(202) 479-3022

Attachments to Complaint **L1**
In Pertinent Part

The Superior Court

John A. Clarke — Northwest District

Executive Officer/Clerk — 6230 Sylmar Avenue Van Nuys California 91401 818 374-2196

Date _____
Case No. LC40186
Wilson vs. State of CA.

The request for entry of a civil default submitted by you in the above entitled action has been turned for the reason checked below.

☐ 1. Original Summons has not been filed.
X 2. Answer, demurrer, disclaimer or motion of nature preventing entry of default has been filed by defendant.
☐ 3. Proof of Service:
☐ 4. Declaration of service/acknowledgment of service upon a corporation or associated does not state that service was made on an authorized officer-president, vice-president, treasurer, assistant treasurer secretary, assistant secretary, general manager or person authorized to accept service of process (412.30 and 416.10 CCP).
☐ 5. Request to enter default is premature.
☐ 6. Defendant was not served as sued.
Sued as _____
Served as _____
☐ 7. Request to Enter Default not dated/signed by attorney of record.
☐ 8. Name(s) of the defendant(s) not set forth on request to enter default as named on the _____ complaint.
☐ 9. Declaration under 585.5 not completed/dated/signed.
☐ 10. Declaration of mailing (587 CCP)
☐ 11. The name of the defendant on the complaint and on the summons is different. Declaration and order correcting one

or the other must be filed.

☐ 12. A declaration showing acts relied on to establish reasonable diligence must be filed when service is made by substituted service.

☐ 13. Declaration of mailing or inability to Ascertain Address (Form 104) must be filed following publication.

☐ 14. Stated amount of damages and Proof of Service of stated amount of damages pursuant to 25.11 CCP is required. At this point all $ amounts must be complete. "According to Proof" not acceptable.

140 C.A.3d 755 *Plotitsa vs. Superior Court of Los Angeles County*, (3/14/93) mandates a separate "Statement of Damages" with the amount as special and general damages clearly indicated, and that is be served by personal service or any other service require for the service of summons. Following personal service, 30 days must lapse before requesting entry of default

☐ 15. No further proceedings in this matter pursuant to 583.22 and 583.250. The clerk no longer has authority to enter default.

☐ 16. After "Amendment to the Complaint" has been filed with the court, the defendant is named and no longer designated by the term Doe.

☐ 17. Proof of Service on non-appearing parties on transferred cases has not been filed.

☐ 18. The request fails to direct clerk to proper complaint

☐ 19. Other

_____

_____

☐ If default entered as to one or more defendants on the Request and turned down as to others, a new Request for Entry of Default (Form 9) must be submitted.

JOHN A. CLARKE
Executive Officer/Clerk

By: s/_____
E. Sloan, Deputy

FORM 982(A)(6). REQUEST FOR ENTRY OF DEFAULT **L2**

In Pertinent Part

Attorney or Party without Attorney
Wilma Wilson
5544 Calhoun Avenue
Van Nuys, CA 91401-4915
(818) 787-4340
Attorney For: Plaintiff in Pro Per

REC'D NW
May 07, 1997

Name of Court, District, Branch, if any
Los Angeles Superior Court, Northwest District

Plaintiff: Wilma Wilson
Defendant: State of California, Et Al

Request for (Application) X Entry of Default ☐Clerk's Judgment
X Court Judgment Case Number LC040186

1. To the Clerk: On the complaint or cross-complaint filed
   a. On May 5, 1997
   b. Wilma Wilson
   c. X Enter default of defendant: Safeco Insurance Company
   d. X I request a court judgment under CCP 585(b), (c), 989, etc. (Testimony required, apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under CCP 585(d).

2. Judgment to be entered	Amount	Credits	Balance
a. Demand on complaint	$2,099,363		$2,099,363
b. Statement of damages (CCP 425.11)*			
1. Special	$1,337,488		$1,337,488
2. General	$ 277,975		$ 277,975
c. Interest	$ 538,815		$ 538,815
d. Costs	$ 686		$ 686
e. Attorney	$ 0		$ 0
f. TOTALS	$2,154,278	_____	$2,154,278

   g. Daily damages were demanded in complaint at the rate of $176.11 per day beginning : 7-19-85

Date: May 5, 1997
Wilma Wilson /s_____

* Personal injury or wrongful death actions only
(1) Default entered as requested on (date):

FOR COURT USE ONLY (2) Default NOT entered as requested (state reason)

By: _____

4. ☐ Declaration of Mailing (CCP 587) A copy of this Request for Entry of Default was

a. ☐ not mailed

b. ☐ mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows: PERSONALLY SERVED

May 7, 1997 Eric Little, LaT & G, P.O.Box 21978, 211 East Ocean Blvd, Suite 410, San Francisco, CA 94142-2210

I declare under penalty of perjury under the laws of the State of California that the foregoing items 3 and 4 are true and correct.

Date: May 7, 1997 Ben Walsh /s_____

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5. Memorandum of Costs (Required if judgment requested) Costs and Disbursements are as follows (CCP 1033.5)

a. Clerk's filing fees	$184.00
b. Process server fees	27.90
c. Other: Supplies, copies	
d. postage, law library	474.03
e. TOTAL:	$685.93

I am the attorney, agent or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury of the State of California that the foregoing is true and correct.

DATE: May 5, 1997 Wilma Wilson /s_____

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6. X Declaration of Nonmilitary Status (Required for a judgment) No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. Appen. Section 501 et seq)

DATE: May 5, 1997 Wilma Wilson

/s_____

SUMMONS
(CITATION JUDICIAL)
In Pertinent Part

L3

NOTICE TO DFEFENDANT: For Court Use Only

The State of California, Department of Industrial Relations, Workers' Compensation Appeals Board, Lloyd W. Aubry, Casey Young, Mark Kahn, Stanley S. Feinstein, Ileane Miller, Safeco Insurance Company, Doris L. Nistler, and Does 1 through 100

YOU ARE BEING SUED BY PLAINTIFF:

Wilma Wilson

You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response to this court.
A letter or phone call will not protect you, your typewritten response must be in proper legal form if you want the court to hear your case.
I you do not file your response on time, you may lose the case, and you wages, money and property may be taken without further warning from the court.
There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

The name and address of the court is: Case Number: LC 040186
Los Angeles Superior Court, Northwest District
6230 Sylmar Avenue, Van Nuys, California 91401

The name, address and telephone number of plaintiff's attorney, or plaintiff without an attorney is:
Wilma Wilson
5544 Calhoun Avenue, Van Nuys, CA 91401
818 787-4340

DATE: 2-14-97 John A. Clarke, Clerk by K. Lascola, Deputy
Seal Notice to the Person Served: You are served

3. X on behalf of *(specify)*: Safeco Insurance Company

Under: XCCP 416.10 (corporation)

4. X by personal delivery on *(date)*: 3-14-97

Form Adopted by Rule 982 (See Reverse for Proof of Service)
76S818B/R9-93
Judicial Counsel of California SUMMONS CCP 412.20

Judicial Council of California
Administrative Office of the Court
Trial Court Services Division
303 Second Street, South Tower • San Francisco, CA 94107-1366
Telephone 415-904-6022•Fax 415-3996-9281•TDD 415-396-9288

L4

Ronald M. George
Chief Justice of California
Chair of the Judicial Council

William C. Vickery
Administrative Director of the Courts

Dennis B. Jones
Chief Deputy Director

Kiri Torre
Director Trial Court Services

TO: Each Clerk of the Courts of Appeal
Each Clerk/Executive Officer of the Superior Court
Each Municipal Court Clerk/Court Administrator
Commission on Judicial Performance

FROM: Vicki Muzny, court Services Analyst
Court Program Services Unit

DATE: January 16, 1998

SUBJECT: Dissemination of Vexatious Litigant Prefiling Orders List

Enclosed please find the latest Vexatious Litigant Prefiling Orders List required to be compiled and disseminated by the Judicial Council pursuant to Code of Civil procedure section 391.7. this list updates the list distributed on October 17, 1997. There are 17 addition manes of individuals or organizations against whom courts in the state entered orders prohibiting future filings without leave of the presiding judge. These new names have been underlined to make them easier to identify. The list includes orders that were entered through December 31, 1997, and received by the Administrative Office of the Courts prior to publishing.

The judicial Council is required to compiles and disseminates to the clerks of courts a list of those orders that contain a future filings prohibitions. Only these orders are included in this list. The list will indicate if a prefiling order is limited to certain cases or jurisdictions. If a court sends an order that does not contain a future filings prohibition, i.e., it contains a statement that the individual has been declared a vexatious litigant, or a requirement that a bond be posted, but no future filings prohibition, it will be returned to the sending court and the name of the individual subject to that order will not be included on the list. Prefiling orders are to be sent to:

Administrative Office of the Court
303 Second Street, South Tower
San Francisco, California 94107
ATTN: Vicki Muzny
(Fax 415-90406037)

We would appreciate the court using form MC-700 Prefiling Order – Vexatious Litigant, for your prefiling orders. If you have any questions, please contact Vicki Muzny at (415) 396-9309. If there is a specific individual at your court to whom you would like to have the list sent, please let Vicki know, and she will add him or her to the mailing list. Thank you for your efforts to jeep this list up to date.

FOURTH QUARTER 1997 – VEXATIOUS LITIGANT LIST
Prepared and Maintained by the Administrative Office of the Courts
From Orders Received from California Courts
(Orders prohibiting future filings entered thru December 31, 1997)
In Pertinent Part

Last Name	First Name	Court	Date
Agha	Ali	Sonoma Superior Court	5/24/95
Alazzaei	Sann Aldin	Orange County Superior Court	2/27/92
Ali	Sherif	San Diego Superior Court	7-14-97
Allen	Bruce	Santa Clara Superior Court	11/10/94
Allen	Patricia	Santa Clara Superior Court	11/10/94
Allen	Rosella	Santa Clara Superior Court	9/10/96
Anderson	Henry	Calaveras Superior Court	11/29/93 3/10/94
Anderson	Mae	Los Angeles Superior Court	11/9/93
Andrisani	Albert	Court of Appeal 2nd Dist	9/2/92

Andrisani	Samuel	Court of Appeal 2nd Dist	2/5/96
Aronoff	Gloria	S. Orange County Muni Court	2/23/93
Austen	Donald	Los Angeles Superior Court	8/1/94
Ayrs	Julian	Los Angeles Superior Court	6/19/95
Azami	Cyrus	Los Angeles Superior Court	1/6/95
Bach	John	Butte superior Court	4/24/92
Bahinipaty	Lingaraj	San Diego Superior Court	5/1/95
Bailey	Russell	San Diego Superior court	7/25/97
Bailey	Warren	Court of Appeal 2nd Dist Div 5	7/28/93
Balassy	Albert	Los Angeles Superior Court	9/25/91
Banks	Alfred	San Diego Superior Court	5/29/91
Baptiste	Edward	Santa Clara Superior Court	12/12/97
Barabino	Robert	Sacramento Superior Court	5/4/95
Beazley	Dwight	Orange County Superior Court	9/14/94
Behfarin	Fred	Los Angeles Superior Court	10/21/94
			1/19/95
Belton	Larry	Sacramento Superior Court	5/18/95
Bickmore	Gregory	Butte Superior Court	8/11/95
			3/29/96
Billings	Christina	Pasadena Muni Court	11/23/94
Billon	Ming	Alameda Superior Court	12/16/91
Bittaker	Lawrence	Marin Superior Court	4/20/93
Black	Yvette	Los Angeles Superior Court	9/10/93
Bleisch	William	San Diego Superior Court	undated
Borland	Barbara	Newhall Muni Court	10/21/92
Botello	Ruben	Humboldt Superior Court	11/2/92
Bowen	Anthony	Kern Superior Court	9/12/94
Bradley	Audrey	Orange Superior Court	11/17/97
Brandes	Alaine	Riverside Superior Court	3/8/94
Breland	Frank	San Diego Superior Court	12/15/97
Brodeur	Mona	San Mateo Superior Court	7/14/93
			7/30/93
Brown	Joyce	Court of Appeal 2nd Dist Div 5	7/7/94
Brown	Sherwood	San Diego Superior Court	3/21/97
Browning	Howard	Los Angeles Superior Court	10/28/94
Bryant	David	Sacramento Superior & Muni	8/5/96
Burrell	Roger	Los Angeles Superior Court	2/23/94
Cain	Daryl	San Diego Superior Court	9/18/91

Callahan	Sherry	Sonoma Superior Court	1/31/92
			10/21/94
Campbell	Stuart	Los Angeles Superior Court	4/15/92
Carmain	Lawanda	San Bernardino Muni Court	9/25/91
Carter	James	Orange County Superior Court	3/28/94
Cass	Robert	Los Angeles Superior Court	5/3/94
Chadwick	Anne	Los Angeles Superior Court	8/4/92
Chantel	Darlene	Madera County Court	4/27/94
Chantel	Roger	Madera County Court	4/27/94
Childs	Juanita	Kern Superior Court	9/22/92
Choyce	Bruce	San Francisco Superior Court	3/1/95
		Alameda Superior Court	9/16/96
Clampitt	Rosemarie	Los Angeles Superior Court	10/13/93
Clay-Hunter	Pauline	Los Angeles Superior Court	3/14/96
Cooper	Bobby	Los Angeles Superior Court	3/10/95
Coplan	Debra	Court of Appeal 2nd Dist Div 1	11/30/94
Cross	Nancy	San Mateo Superior Court	4/28/92
Crow	Brad	San Diego Muni Court	6/9/92
Cyrus	Suprina	Los Angeles Superior Court	11/3/92
Daly	Jerome	Contra Costa Superior Court	7/21/95
Daniels	Brian	San Diego Superior Court	12/23/94
Davis	Debra	Los Angeles Superior Court	3/30/95
Davis	Mayr D A	Vallejo-Benicia Muni Court	10/24/91
Delman	David	Los Angeles Superior Court	10/24/94
Devereaux	Robyn	Los Angeles Superior Court	11/21/91
Derezinski	Maksymilian	San Diego Muni Court	12/19/95
Dimov	Jim	Los Angeles Superior Court	3/24/93
		Court of Appeal 2nd Dist Div 4	3/5/95
Dobard	Raymond	San Francisco Superior Court	9/18/96
Doose	Ginn	Ventura Superior Court	2/9/93
Dotson	Ethel	Contra Costa Superior Court	9/6/95
Duckwald	Stephen	Madera Superior Court	12/29/94
Dupre	Donald	Court of Appeal 2nd Dist Div 5	7/26/93
Dymits	Lee	Court of Appeal 1st Dist Div 5	3/20/97
Easton	Shawn	San Diego Superior Court	6/21/94
Edwards	William	San Diego Superior Court	7/22/97
Elias	Nikolaos	Pasadena Muni Court	11/23/94
Erenyi	Leslie	Los Angeles Superior Court	11/19/93

Evans	Jorsh	San Bernardino Superior Court	6/7/93
Falk	Jean	Orange Superior Court	2/14/97
Farrell	Frances	Pasadena Muni Court	10/19/92
Federico	Doris	Ventura Superior Court	5/4/93
Federico	Teresa	Ventura Superior Court	5/4/93
Ferlingere	Robert	Amador Superior Court	6/29/95
Flowers	Michelle	Stanislaus Superior Court	1/11/95
Floyd	Anthony	Newhall Muni Court	9/10/92
Flynn	Errol	Los Angeles Superior Court	5/17/94
Forrest	Ernestine	Court of Appeal 2nd Dist Div 5	4/25/94
Furr	Ralph	Butte County Superior Court	12/10/97
Ganjai	Jeff	Orange County Superior Court	12/9/92
Garth	Oliver	Los Angeles Superior Court	2/20/97
Georgi	Hugh	Pasadena Muni Court	5/31/95
Gharrity	Patrick	Santa Cruz Muni Court	7/7/93
Gibson	Patrick	San Diego Superior Court	7/21/94
Gilbert	Herbert	Court of Appeal 1st Dist Div 5	7/19/95
Gillings	Francis	Alpine Superior Court	3/31/97
Gillings	Ruth	Alpine Superior Court	3/31/97
Goffney	Keith	Los Angeles Superior Court	10/5/93
Goldberg	Elaine	Beverly Hills Muni Court	8/27/92
Goldberg	Ruth	Los Angeles Superior Court	1/27/94
Golden	Stephen	Los Angeles Superior Court	1/21/94
Goldwasser	Harold	Los Angeles Muni Court	8/22/91
Gonzaba	Lizabeth	San Diego Superior Court	12/12/95
Gonzaba	Mark	San Diego Superior Court	12/12/95
Gonzalez	Raul	Los Angeles Superior Court	7/12/95
Gossman	Sanford	Marin Muni Court	11/30/93
Govindan	Palani	Los Angeles Superior Court	7/18/95
Grasso	Eugene	San Diego Superior County	7/16/93
Gray	Gracie	Los Angeles Superior Court	11/7/95
Greenberg	Robert	South Orange Muni Court	6/12/95
Grigsby	Kenneth	Alameda Superior Court	9/15/94
Gulbenkian	Paul	San Francisco Superior Court	2/24/93
Hammond	Gloria	Oakland-Pedmont-Emeryville Muni Court	6/4/96
Hargreaves	Philip	San Diego Superior Court	1/31/96
Harville	Quincy	Los Angeles Muni Court	8/15/95

Hathaway	Darlene Ann	San Diego Superior Court	12/12/95
Hawkins	Yancy	Los Angeles Superior Court	7/29/93
Hayes	Michael	Los Angeles Superior Court	12/2/94
Henderson	Damon	Los Angeles Superior Court	11/22/95
Herrmann	J.D.	Orange Superior Court	10/3/97
Hockmuth-nowell,	Joyce	Sacramento Superior Court	10/20/93
Hoelzel	Lucy	Los Angeles Superior Court	4/15/92
Howard	John	Los Angeles Superior Court	11/2/93
Hubbard	Wendy	Los Angeles Superior Court	12/23/92
Huffman	Susan	Monterey Superior Court	9/4/97
Hughes	Regina	Los Angeles Superior Court	11/24/93
Hughes	Jonathan	Sonoma Superior Court	1/31/92
Human	Siavash	Los Angeles Superior Court	3/15/95
Hunter	Crystal	Los Angeles Superior Court	3/14/96
Hurst	Sammy	San Francisco Superior Court	11/22/96
Hutton	Dolores	Los Angeles Superior Court	4/20/93
Ibrahim	Joseph	Los Angeles Superior Court	3/3/94
Izmailova	Elmira	Court of Appeal 2nd Dist Div 5	11/1/94
Jhaveri	Ashok	Fresno Superior Court	11/19/97
Johnston	Mark	Butte Superior Court	7/31/97
Jones	Earl	Los Angeles Superior Court	3/23/95
Judge	John	Los Angeles Superior Court	4/2/92
Judge	Kathleen	Los Angeles Superior Court	4/2/92
Kabakow	Harry	Los Angeles Superior Court	11/9/95
Kalakay	Michael	San Diego Muni Court	1/7/94
Kalapos	Elizabeth	Los Angeles Superior Court	3/10/97
Kallmeyer	Christine	San Diego Superior Court	8/28/91
Kapelus	Marvin	Ventura Superior Court	1/24/97
		Los Angeles Superior Court	21/21/97
Kerestessy	John	San Bernardino Muni Court	9/25/91
Khooshabi	Susan	Los Angeles Muni Court	12/29/93
Kile	Robert	Placer County Muni Court	5/17/93
Kohl	Barry	Court of Appeal 2nd Dist Div 5	2/21/95
Konieczny	John	Los Angeles Superior Court	12/15/97
Krain	Lawrence	Orange County Superior Court	3/1/96
Kutsko	Michael	San Francisco Superior Court	12/26/91
Labankoff	Fred	Sonoma Superior Court	7/1/96
			10/21/96

Lackland	Bobbietter	Delta Muni Court	6/14/93
Lacy	Brenda	San Francisco Superior Court	10/28/92
Lamanna	Frank	Los Angeles Superior Court	8/5/94
Lavold	James	Orange County Superior Court	5/7/92
Lecher	John	Fresno Superior Court	5/5/94
Ledbetter	Lonnie	Sacramento Superior Court	11/1/96
Lee	George	Solano Superior Court	9/8/94
Lee	Jean	Solano Superior Court	9/8/94
Legard	Preston	Sacramento Superior Court	3/8/96
Lenoir	Harrison	Los Angeles Superior Court	11/12/92
Lewis	Mildred	Vallejo-Benicia Muni Court	8/21/91
Lewis	Rosemary	Los Angeles Superior Court	3/30/95
Long	Isabelle	San Diego Superior Court	6/9/97
Long	Sandra	San Diego Superior Court	6/9/97
Long	Thomas	San Diego Superior Court	6/9/97
Luckett	John	Court of Appeal 4th Dist Div 3	7/11/91
Madan	Dave	Los Angeles Superior Court	12/15/92
Madan	Ritu	Court of Appeal 2nd Dist Div 5	11/28/95
Magee	J.	Los Angeles Superior Court	10/12/94
Mailberg	Michael	San Bernardino Muni Court	3/31/97
Manttari	Des	Los Angeles Superior Court	6/11/93
Marchuk	Frank	Santa Clara Superior Court	11/25/92
Marks	Rosalie	Los Angeles Superior Court	6/2/93
Masors	Bruce	Long Beach Muni Court	6/30/92
Masters	Mindy	Los Angeles Superior Court	7/25/97
Mazzaferro	Ronald	Santa Clara Superior Court	12/20/96
McColm	Patricia	San Francisco Superior Court	12/15/95
McCormick	William	Shasta County Superior Court	7/1/94
McCreary	Bruce	Placer Superior Court	12/5/94
McGovern	Michael	Alameda Superior Court	6/6/94
McInerney	Joseph	Court of Appeal 1st Dist	6/9/92
McKenzie	H.	Los Angeles Superior Court	6/8/93
McKenzie	Harry	Los Angeles Superior Court	6/14/93
McKinney	Ellen	Los Angeles Superior Court	4/23/93
McMillan	John	Los Angeles Superior Court	11/7/97
McWilliams	Gloria	Monterey County Sup'r Court	10/24/95
Messih	Shoukry	Los Angeles Superior Court	5/12/95
		Court of Appeal 2nd Dist Div 5	

Meyers	Joseph	Los Angeles Superior Court	7/29/97
Midwife	Mister	Court of Appeal 4th Dist Div 1	11/16/93
Miller	Richard	Sonoma Superior Court	5/24/95
Mines	Isiah	Pasadena Muni Court	7/15/91
Mish	Susan	San Diego Superior Court	12/15/97
Mitchell	C.Lambert	Los Angeles Superior Court	1/31/95
Moore	Lawrence	San Diego Superior Court	7/21/97
Moore	Nellie	San Francisco Superior Court	4/8/92
Moreno	Diana	San Diego Superior Court	12/12/95
Morgan	Richard	Fresno Superior Court	6/14/94
Morris	Judy	Sacramento Superior Court	6/30/92
Morris	Kenneth	Sacramento Superior Court	6/30/92
Muresan	Viorel	Los Angeles Superior Court	12/5/97
Narula	Mohan	Ventura Superior Court	9/19/94
Neuton	Laurence	Los Angeles Superior Court	3/23/95
Newman	R.E.	Antelope Muni Court	6/23/97
Ngo	Viet	Los Angeles Superior Court	6/19/92
Niculescu-Baba,	Constantin	Los Angeles Superior Court	6/11/93
Norty	Yvonne	Los Angeles Superior Court	12/24/92
Nortey	Yvonne	Los Angeles Superior Court	3/31/93
		Los Angeles Muni Court	12/6/93
Nkop	Asuquo	Sacramento Superior Court	3/12/93
Nzongola	Flossie	Monterey Superior Court	5/20/94
O'Rourke	Albert	San Diego Superior Court	11/1/96
Olick	David	Contra Costa Superior Court	4/22/96
Ong	Howard	Los Angeles Superior Court	4/7/92
Odesa Ream Company		Court of Appeal 2nd Dist Div 5	11/28/95
Ortega	Ricky	Los Angeles Superior Court	9/22/95
Painter	Richard	El Cajon Muni Court	12/11/91
del R. Padilla	Maria	San Joaquin Superior Court	5/16/91
Palumbo	Frederick	San Diego Superior court	3/30/94
Parri	Doris	Sacramento Superior Court	7/26/91
People's Church		Pasadena Muni Court	7/15/91
Perati	Paul	Court of Appeal 1st Dist Div 2	10/14/93
Peters	Russell	Santa Barbara Superior Court	3/7/97
Pope	Theresa	Los Angeles Muni Court	12/6/96
Popescu	Virgil	San Diego Superior Court	10/28/97
Powers	David	Downey Muni Court	1/8/93

Pozzi	Americo	Sonoma Superior Court	6/3/94
Prieto	Maria	Los Angeles Superior Court	6/20/97
Prieto	Frank	Los Angeles Superior Court	6/20/97
Pulley	Larry	Los Angeles Superior Court	3/22/96
Purlantov	Valco	San Francisco Superior Court	5/11/94
Radcliff	Arthur	Court of Appeal 2nd Dist Div 5	12/17/93
Rawuka	Mary	Orange Superior Court	5/29/96
Realty Company of America		Los Angeles Superior Court	5/26/93
Reiss	Jonathan	Los Angeles Superior Court	1/3/95
Rennie	Donald	Los Angeles Superior Court	9/30/96
Reyes	Pablo	Tulare Superior Court	4/6/94
Reyes	Teresa	Tulare Superior Court	4/6/94
Reynolds	Brian	Los Angeles Superior Court	3/31/92
Roberts	Elaine	Alameda Superior Court	4/20/93
Rockwell	Richard	El Cajon Muni Court	12/4/97
Ross	John	San Diego Superior Court	6/21/94
Rostler	Susann	Los Angeles Superior Court	8/2/96
Rucker	Harold	Santa Clara Superior Court	4/25/91
Rupert	William	Santa Cruz Superior Court	8/2/91
Russell	Eunice	Los Angeles Superior Court	undated
Ruther	Tryru	San Francisco Superior Court	6/5/92
Saaj	Darrell	Los Angeles Muni Court	3/28/96
Sakentoosi	Hashem	San Diego Superior Court	7/5/94
Sand Ship Company		Court of Appeal 2nd Dist Div 5	11/28/95
Say & Say, Inc.		Court of Appeal 2nd Dist Div 5	12/16/93
Schaefer	Michael	San Diego Muni Court	2/4/97
Schneider	Donal	San Luis Obispo Sup'r Court	8/17/94
Selinger	David	San Diego Superior Court	12/30/94
Sellers	Margaret	Orange County Harbor Muni Ct	8/24/94
Server	Ralph	Santa Barbara Superior Court	8/14/92
Shers	Perry	San Francisco Superior Court	8/16/95
Shieh	L.	Los Angeles Superior Court	12/11/92
Shieh	Liang-Houh	Court of Appeal 2nd Dist Div 1	8/12/93
Shor Make Company		Court of Appeal 2nd Dist Div 5	11/28/95
Singh	Raghvendra	Sonoma Muni Court	6/7/95
Singh	Raghvendra	Santa Clara Superior Court	12/2/94
Skistimas	Alfred	Court of Appeal 4th Dist Div 3	11/18/93
Smith	Anne	Los Angeles Superior Court	4/15/92

Smith	Daniel	Los Angeles Superior Court	12/13/93
Soho	Sandra	Newhall Muni court	3/25/93
Soto	John	San Diego superior Court	7/3/97
Spitters	Louis	Sonoma Muni Court	10/6/97
Stein	Paul	San Diego Superior Court	11/15/93
Stich	Rodney	Court of Appeal 1st Dist	2/22/94
Stone	New-Oralean	Alameda Superior Court	7/9/91
Stone	Wilfred	Alameda Superior Court	7/9/91
Stednitz	Denis	San Diego Superior Court	10/15/97
Sun	Chen	Salano Superior Court	9/8/94
Swingle	Justin	Beverly Hills Muni Court	4/29/93
Szymczak	Robert	San Diego Superior Court	3/22/93
Tagaloalagi	Julie	Orange County Superior Court	10/6/95
Tanno	Ellen	Santa Clara Superior Court	2/21/97
Taylor	Colleen	Long Beach Muni Court	2/22/94
Taylor	Freddie	Los Angeles Superior Court	4/20/93
Taylor	Gloria	Los Angeles Muni Court	9/26/96
Taylor	John	Alameda Superior Court	3/4/93
Terry	Janette	San Diego Superior Court	12/12/95
Thrasher	Donald	Los Angeles Muni Court	5/6/97
Thurman	Alan	Los Angeles Superior Court	4/14/93
Thymes	John	Los Angeles Superior Court	1/6/94
Thymes	Shirley	Los Angeles Superior Court	1/6/94
Tillman	C.R.	Pasadena Muni Court	7/15/91
Tillman	Dorothea	Pasadena Muni Court	7/15/91
Tillman	Kane	Pasadena Muni Court	7/15/91
Timehin	Martins	San Francisco Superior Court	9/20/91
Todd	Erica	Stanislaus Superior Court	6/4/96
Tong	Shong-Ching	Court of Appeal 2nd Dist Div 5	11/24/93
Trotter	Vivian	Alameda Superior Court	8/1/97
Turner	Barbara	Santa Clara Superior Court	5/3/93
Uribe	Nelly	Los Angeles Superior Court	9/24/93
Valladares	Monica	Santa Clara Superior Court	4/4/96
Van Rijs	Adrian	Los Angeles Superior Court	10/12/95
Vasilieff	Nadine	Los Angeles Superior Court	2/7/95
Vega	Arturo	Los Angeles Superior Court	2/6/97
Vigil	Michael	San Joaquin Superior Court	1/7/92
Villar	Dario	San Francisco Superior Court	2/26/97

Walker	Roy	Los Angeles Superior Court	4/2/93
Wanveer	Lloyd	San Francisco Superior Court	10/3/85
Wanveer	Paul	San Francisco Superior Court	10/3/85
Warren	David	Orange County Superior Court	9/12/91
Waters	B.B.	Los Angeles Superior Court	3/30/93
Watson	Ruby	San Diego Superior Court	1/26/96
Weiner	Lawrence	Marin Supeior Court	8/6/92
Weiss	Valerie	San Diego Superior Court	3/12/96
Welsh	Michael	Los Angeles Superior Court	1/6/93
Wetzel	John	Los Angeles Superior Court	1/19/93
Whitaker	Fred	Alameda Superior Court	11/22/91
		Court of Appeal 1st Dist	5/6/92
Williams	Carroll	Ventura Superior Court	8/25/92
Williams	Joyce	Los Angeles Superior Court	1/24/94
Wilmot	Charles	Kern Superior Court	5/10/93
Winkler	Jutta	San Diego Muni Court	1/29/93
Winter	A.P.	San Diego Superior Court	6/19/95
Wolfe	Burton	San Francisco Superior Court	4/13/92
		Court of Appeal 1st Dist	7/29/93
Wolfgram	John	El Dorado Superior Court	8/28/95
Wood	Michael	San Mateo Superior Court	11/9/93
Woodward	Jim	Santa Barbara Superior Court	8/16/91
Wormley	Judith	Santa Clara Superior Court	11/21/95
Wyrick	Robert	Lodi Muni Court	7/5/94
Yale Keet Company		Court of Appeal 2nd Dist Div 5	11/28/95
Yang	Abraham	San Francisco Superior Court	12/22/94
Zakharia	Edward	Los Angeles Superior Court	12/22/94
Zatko	Vladimir	Kings County Superior Court	6/12/92
Zogby	Connie	Los Angeles Muni Court	11/15/95

January 16, 1997

L5

PRESIDING JUSTICE PAUL TURNER
CALIF. COURT OF APPEAL – 2ND DISTRICT
In Pertinent Part

DATA Paul Turner
Court: California Court of Appeal – 2nd District, Division 5
Title: Presiding Justice
Address: 300 S. Spring St., Los Angeles, 90013-1213
Dates: 1991 to present
Telephone: (213) 897-5080
Fax: (213) 897-5990
Appointed by: Gov. Deukmajian
Date: January 7, 1991

PROFILE

On the bench, Presiding Justice Paul of the 2nd District Court of Appeal is a man of few words. But off the bench, he is known as a man of many, many words.

Turner, at 48 among the state's youngest judges, is credited with running one of its most efficient appellate divisions. The rate of published opinions is among the lowest in the state, writs are expedited quickly, and appellate lawyers are generally pleased with the pace with which turner and his colleagues move opinions through the system.

And his sense of the absurd is, indeed memorable. "Paul put a bathtub in his office and used it as a planter. Don't ask me why, but it sure caught your attention when you walked into the room" remembered Alan D. Ross, who heads a law corporation in Encino, where Turner practiced as an appellate counsel from 1979 to 1983.

Court watchers give Turner high marks for operating a smooth, efficient division that turns out thorough, well-reasoned opinions. "It is one of the best divisions in the state in that regard, especially in its expeditious handling of writs," said veteran appeals attorney Dennis Fischer, who appears often in the 2nd District.

Since Turner took over the division in 1991, the rate of published opinions has been cut by more than 50 percent. In the 1994-95 fiscal year, the division's publication rate was a scant 4 percent the statewide average was 8 percent according to figures complied by the Judicial Council of California.

Effective case management is one of Turner's highest priorities. He said the backlog of cases headed for the 2nd District is staggering: as of June, more that 1,650 petitions for appeals were stacked in various superior courts, awaiting the completion of the trial record.

"The first case I had as a presiding justice was 7 years old," he recalled. "Lawyers expect to have their day in appeal court, and under the law they are entitled to it. But somehow, we have to change the legal culture in this district.

One possible solution: "Attorneys take a long, hard look at the possibility of settling their cases, even during the appeal process, because settlement just may be in the best interests if their clients." Turner said.

Turner credits a highly professional staff for the efficient operation of the division. They include senior research attorneys Lela Huckabee and Karen Grey, central staff attorney Dale Manolakas, divisional secretaries Christopher Lee and Sandy Belmonte, and his personal secretary, Terri Meadows, who formerly worked for Justice Arabian.

On criminal matters, Turner is considered a hardliner and, to some degree, pro-prosecution. Although he holds police agencies and prosecutors to substantial compliance with procedures he frequently cites the "harmless error" doctrine to reject appeals and, as such, has never overturned a criminal conviction. In several instances, he has reversed trial court judges who were reluctant to impose consecutive prison sentences under the state's three-strikes sentencing law.

Turner also made news in February 1995, ruling that former chief Daryl F. Gates and five high ranking members of the Los Angeles Police Department were immune from paying damages to injured victims of the riots that broke out after a jury in Simi Valley acquitted four police officers for the beating of motorist Rodney King.

In reversing a decision by the trial court not to grant demurrers, Turner ruled that the commanders, accused of discrimination for failing to send men to the corner of Florence and Normandy, were nonetheless protected by the Torts Claim Act of 1963, even if the discrimination charges were true.

Documents in Support of Appointment of Counsel **M1**

Affidavit of Stuart Campbell

Now comes Stuart Campbell who declares as follows under penalty of perjury:

On April 15, 1992 the Colonial Penn Insurance Company obtained a court order that declared me and my mother Anne C. Smith to be "Vexatious Litigants". Said order was based solely on false information supplied by the insurance company. My mother, Anne C. Smith, had never lost a case before inasmuch as her only filings were against the insurance company, and none had been completed. I had lost only one case because the party I had sued had moved and could not be served. I was then aged 75. Anne Smith was 94.

Anne C. Smith filed an appeal with Judge Paul A. Turner, but could not appear on the scheduled date because she had a colon cancer 8" x 9" removed. Despite a note from her doctor Judge Turner dismissed the case so the ruling of "Vexatious Litigant" could never be removed for the rest of her life, or mine.

After battling the insurance company for three years on my own, we finally found a competent attorney; and the insurance company settled by paying the sum of $500,000 to Anne C. Smith. This in itself should invalidate the "vexatious litigant" label for it proves our cases had merit. If CCP 391 had been enforced we would both be on welfare now.

Executed in Sun Valley, California on this the 20th Day of May 1998.

s/_____ s/_____

Anne C. Smith Stuart Campbell

Declaration of Adrian Van Rijs in support of Wilma Wilson's Opposition to the Vexatious Litigant Statutes of California

I Adrian Van Rijs, declare as follows: **M2**

1. I was declared a vexatious litigant in the Los Angeles Superior Court for representing myself in propria persona. I have personal knowledge of the items set forth in this declaration and if called as a witness, could and would competently testify thereto.

2. The state statute is directed at persons who represent themselves in a Court of Law and singles out such persons for special treatment and consideration from those persons who are represented by counsel. Such treatment in my view is discriminatory and violates Section 1 of the 14th amendment to the constitution, in that it denies equal protection of the laws, in favor of those who can afford, or able to pay for, legal counsel.

3. Due process of law is guaranteed by our Federal constitution, and the right to petition for a redress of grievances as stated in the 1st amendment. The vexatious litigant statute is hindering litigants who represent themselves (frequently due to a lack of ability to pay for counsel) from bringing a claim before the courts. If such claims are subject to screening by a judge, without the benefit of an answer from the defendant, it is apparent that the adversarial process is skipped and rulings could be considered as prejudicial.

4. Litigants are entitled to trial by jury, as stated in Article 3 and the 7th amendment of the constitution. The vexatious litigant statutes empower judges to prevent trial by jury on the grounds that litigants have violated this state statutes. Considering that litigants are entitled to trial by jury, the subject statute conflicts with this right in as much as a judge can prevent it from being heard by a jury, based not on its merits, but on some prior behavior of a plaintiff. This deprives a litigant of a trial by jury based on a judge's view of prior behavior of the litigant, rather than the merits of a case.

5. My case against the Prudential Bank resulted in me being declared a vexatious litigant, which in turn cause my appeal in another case to be dismissed. The State Court of appeal decided not to allow the appeal due to my vexatious litigant status with the State Court.

6. It is my view that in any conflict, the parties should not only prevail by virtue of the ability to afford counsel, or their education, or their intellect, or their skill, but also by virtue of their persistence and tenacity. This statutes gives preference to (attorneys) litigant with legal counsel, to litigants with money, to education, intellect and skill, but blocks people with persistence and tenacity. Justice is a conquest for what is just and should never be restricted in favor of anyone aspect of a person's attributes.

I DECLARE THE FORGOING TO BE TRUE AND CORRECT UNDER PEALTY OF PERJURY. Executed this 20th day of November, 1998 at Los Angeles, California.

s/_____

Adrian Van Rijs

M3 **DECLARATION**

The vexatious litigant law of the State of California must be repealed to prevent abuses of constitutionality guaranteed rights. Under both the 5th and 14th Amendments of the U.S. Constitutional, the right to access to the courts have been guaranteed regardless of one's station in life.

The 14th amendment guarantees every U.S. citizen access to the courts. The fear of being declared a vexatious litigant to someone with limited financial resources in all likelihood prevents that person from pursuing an otherwise worthy case.

While the 5th amendment guarantees equal protection under the law, quite frequently it is intertwined with the 14th amendment. This happens when someone needs to seek an impartial arbiter for adjudication in a civil matter. The constitution does not separate criminal law and civil law and access to an impartial arbiter is the only way to guarantee equal protection under the law.

I have been declared a vexatious litigant under the law of the State of California and in so doing, I had my constitutionally guaranteed rights under the 5th and 14th amendment violated. The court claimed that I filed a "frivolous appeal" when in fact no appeal had ever been taken. I have attached copies of 2 letters that allude to my situation.

The existence of the vexatious litigant statute creates an environment for criminal behavior amongst the very people who are supposed to be officers of the court. A jurist might be persuaded into accepting a bribe in a large enough case if the plaintiffs are representing themselves in Propria Persona believing that the individual lacks the ability or resources to pursue it farther. I believe that the aforementioned is what transpired in my case

I declare the above to be true and correct under penalty of perjury of the laws of the State of California.

Name: Barry Steven Kohl Date: November 16, 1998

Signature s/_____

Beadrsley & Eisenman Attorneys at Law
16000 Ventura Boulevard Suite 1111 Encino, California 91436
Telephone (818) 905 0123 Facsimile (818) 905-5770

M4

April 23, 1996
Barry Kohl
21616 Califa Street, #201
Woodland Hills, California 91367

Re: Writ of Habeas Corpus

Dear Barry:

I have reviewed the documents that you sent me and it appears that your judicial nightmare continues. I would like to assist you in this matter, but I have not had any experience with habeas corpus petitions. Also, the possible political and criminal repercussion of all their wrongdoing makes me a little skittish about getting involves in the matter at this point. F you would like me to give you a referral, I will ask around for you. Please feel free to call me if you have any questions or if you could like to discuss this matter further.

Very truly yours,
Beardsley & Eisenman

s/_____
James M. Eisenman

M5 **The Center for Public Integrity**

Board of Directors
Josie Goytisolo
Charles Lewis
Susan Loewenberg
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Alchandro Benes
Director of Investigative Projects:
Bill Hogan
Director of Development:
Barbara W. Schecter

1634 I Street NW,Suite 902

July 9, 1996

Mr. Barry Kohl
21616 Califa St., #201
Woodland Hills, CA 91367

Dear Mr. Kohl:

Thank you for taking the time to writ the Center for Public Integrity regarding corruption in th California court system. I apologize for the delay in responding.

The Center is a small, nonprofit, non partisan investigative research organization. The information you forwarded would be worthwhile to pursue, but pour resources are strained to the breaking poii8nt. So we are not able to act on the materials you mailede us.

Again, thank you for your letter and your interest in our work

Sincerely,

s/_____

Alejandro Benes
Managing Director

Washington DC 202 783-3900 Fax
202 783-3906 e mail
ctrforpi@essential .org

M6

Horton Barbaro & Reilly
Lawyers
200 North Main Street, Second Floor
Santa Ana, California 92701
(714) 835-2122
Fax 714 973-4892
March 14, 1995

Ms. Wilma Wilson
5544 Calhoun Avenue
Van Nuys, CA 91401 Re: Potential Litigation

Dear Ms. Wilson:

This letter is to thank you for the opportunity to consider the facts you provided us with respect to a possible lawsuit and the similarity of your situation to the recent Mero holding. The factual scenarios presented does not appear to satisfy our present case selection criteria. As a result, we will not be able to be retained by you to pursue this matter.

This letter is neither intended to express an opinion concerning the merits of a potential lawsuit, nor whether you should take further action regarding this situation. We are merely indicating we are unable to represent you. The telephone number for the Los Angeles County Bar Associations; Lawyer Referral Service is (213) 243-1525. They can refer you to other attorneys in the area who specialize in the field of law pertaining to matter such as yours.

As you are aware, there are strict time limitations within which you must act in order to protect your rights in a legal action. These time limits are complex and vary for different types of legal actions. YOU SHOULD ACT IMMEDIATELY IF YOU WISH TO PURSUE THIS MATTER. FAILURE TO FILE A LAWSUIT WITHIN THE REQUISITE TIME MAY MEAN YOU COULD BE BARRED FOREVER FROM PURSUING YOUR ACTION.

We regret we could not accept your case. We wish you the best of luck in pursuing this matter with other counsel.

Very truly yours,
HORTON BARBARO & REILLY
s/_____
William O. Humphreys

M7 **Spence, Moriarity & Schuster**
Attorneys at Law

Gerry L Spence
Edward P Moriarity
Robert P. Schuster
Gary. L. Shockey
J. Douglas McCalla
Roy A. Jacobson, Jr.

Kent W. Spence
Robert K Krause
Glen G. DeBroder
Heather Noble
R. Daniel Fleck
G. Bryan Ulmer, III

November 1, 1996

Wilma Wilson
5544 Calhoun Avenue
Van Nuys, CA 91401

Dear Ms. Wilson:

I was very pleased that you contacted our officer regarding your case. One of the things that makes me feel badly is that it is impossible for us to help everybody. Sometimes I feel guilty about that.

I want you to know that if we could help you we would, but I can't take you case. I wish I could refer you to someone in your area but I haven't anyone in mind. UI also want you to know how complimented I am that you cared enough to contact us. My wishes go out to you for good success in your endeavor to get justice It's hard. Don't give up

Sincerely,

s/_____
G.L.Spence
Of SPENCE, MORIARITY & SCHUSTER

GIRARDI AND KEESE **M8**

Lawyers
1126 Wilshire Boulevard
Los Angeles, California 90017-1904

(213)977-0211

Fax (213) 481-1554

April 24, 1997

Wilma Wilson
5544 Calhoun Avenue
Van Nuys, CA 91401

Re: Your Lawsuit filed in Van Nuys Superior Court

Dear Ms. Wilson:

I regret to inform you that we will not be able to represent you in the above matter. Several facts, including the size of our current caseload, led to this decision.

This does not mean that you case is without merit. Another lawyer may view this case very differently. Therefore, I strongly urge that you contact another lawyer and discuss your case with him or her.

In any event, I wish you the best of luck in obtaining a successful resolution of this matter.

With kind regards,

s/_____
Amy Fisch Solomon

ACLU FOUNDATION of Southern California
M9 *Liberty and Justice for All*

July 30, 1998

Wilma Wilson
5544 Calhoun Ave.
Van Nuys, CA 91401

Dear Ms. Wilson:

We received your letter dated June 11, 1998.

Regrettably, while we appreciate your strong sense of injustice, and just how frustrating you must find these circumstances, we are unable to be of assistance. We receive nearly 10,000 requests for legal help each year, and simply cannot take on each one of them.

We simply have no one available to look into your situation further and know of no other referral.

Thank you for taking the time to write. We wish you the best of luck in resolving this issue.

Sincerely,

s/_____
Lee Morgan
Intake Coordinator

1616 Beverly Boulevard P.O. Box 26907 Los Angeles California 90026-5752 Tel: 213 977-9500 Fax: 213 250-3919
acluinfo@aclu-sc.org www.aclu-sc.org

UNITED STATES DISTRICT COURT **N**
CENTRAL DISTRICT OF CALIFORNIA
ENTERED JULY 27, 1999
CIVIL MINUTES- GENERAL

CASE No.: CV-98-3693 DDP (RZx) Date: July 20, 1999
Title: *Wilma Wilson v. State of California, et al.*

DOCKET ENTRY

PRESENT: HONORABLE MARGARET M. MORROW, UNITED STATES DISTRICT JUDGE **Anel Huerta**
N/A
Deputy Clerk Court Reporter

Attorneys Present for Plaintiff: **Attorneys Present for Defendants**
None **None**

PROCEEDINGS: In Chambers

The facts and procedural history of this case are well known to the parties, and need not be fully recounted here. In brief, plaintiff Wilma Wilson sued the State of California and Safeco Insurance Company, alleging that the California vexatious litigant statutes were unconstitutional, and that Safeco was in default on its obligation to make disability payments to her. Judge Dean D. Pregerson dismissed Wilson's suit.

Wilson moved to disqualify Judge Pregerson, and her motion was assigned to this court for decision. On December 26, 1998, the court issued an order denying Wilson's motion. Wilson then filed a Rule 60(b)(1) motion for relief from the December 26 order. By minute order dated February 15, 1999, the court denied that motion. Wilson then requested further reconsideration, invoking Rule 60(b)(2), and proffered evidence she contended she first discovered after filing her recusal and Rule 60(b)(1) motions. Specifically, Wilson challenged the adequacy of Judge Pregerson's financial disclosure report, identifying the *absence* of information in the report connecting him to Safeco or General Insurance Company. The court denied Wilson's motion because (1) she lacked standing to challenge the adequacy of Judge Pregersons Financial Disclosure Report; (2) she had not presented the court with a basis for altering its prior conclusion that recusal of Judge

Pregerson under 455(a) was warranted; and (3) she had failed to adduce sufficient evidence to support recusal under 455(b)(4).

Wilson has now requested a "stay of any further proceeding, pending an investigation by the Judicial Conference into Judge Dean D. Pregerson's failure to make full and complete statement of his income under Title 5 United States Code 101, 102, 106 and 110."1 Pursuant to Rule 78 of the Federal Rule of Civil procedure and Local Rule 7.11, the court finds the motion suitable for decision without oral argument.

As applied to judges, the Ethics in Government Act ("EGA") provides that "the judicial Conference... shall refer to the Attorney General the name of any individual which such official or committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported." 5 U.S.C. App 104(b). The "Attorney General may [then] bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to [the EGA.]" 5 U.S.C. App. 104(a). The "[district] court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $10,000." *Id.* In addition, the Judicial Conference may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported." 5 U.S.C. App. 104(c).

It is solely within the discretion of the Judicial Conference to take personnel or make a referral to the Attorney General should it question the accuracy a district judge's financial statement. It is also solely within the discretion of the Attorney General whether to initiate a civil action against a judge based on such a referral. *Cf. Nathan v. Smith,* 737 F.2d 1069, 1080 (D.C. Cir. 1984) ("It would be anomalous for this court to hold that Congress intended, *sub silento,* to provide for judicial oversight of the Attorney General's decisions via a private right of action at the same time Congress was vesting the Attorney general with such wide discretion as to the scope of the preliminary investigation, as well as the determination of whether to conduct any investigation at

all"). Wilson has presented no evidence that either the Judicial Conference or the Attorney General has initiated proceedings regarding Judge Pregerson's financial disclosure report, that either has taken preliminary action that might lead to such proceedings, or that either has taken any interest in the matter at all. There is no basis for a stay of proceedings, and Wilson's motion is denied.

cc: Counsel (or parties)

o **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
ENTERED MAY 21, 1999
CIVIL MINUTES- GENERAL

CASE No.: CV-98-3693 DDP (RZx) Date: May 18, 1999
Title: *Wilma Wilson v. State of California, et al.*

DOCKET ENTRY

PRESENT: HONORABLE MARGARET M. MORROW, UNITED STATES DISTRICT JUDGE **Anel Huerta**
N/A

Deputy Clerk Court Reporter

Attorneys Present for Plaintiff: **Attorneys Present for Defendants**

None **None**

PROCEEDINGS: In Chambers

This court was assigned plaintiff's motion to disqualify Judge Dean D. Pregerson, and issued an order denying the motion on December 26, 1998. Wilson then filed a Rule 60(b)(1) motion for relief from the December 26 order. By minute order dated February 15, 1999, the court denied the motion. Wilson has no requested further reconsideration, invoking Rule 60(b)(2) and evidence she claims she first discovered after filing her recusal and Rule 60(b)(1) motions. Pursuant to Rule 78 of the Federal Rule of Civil Procedure and Local Rule 7.11, the court finds the motion suitable for decision without hearing or oral argument.

A Wilson's Motion for Further Reconsideration of Motion to Recuse Judge Pregerson

Wilson asserts that she made a Freedom of Information Act ("FOIA") request for a copy of Judge Dean Pregerson's financial disclosure statement, and did not receive the information requested until February 22, 1999. As evidence of this fact, Wilson has attached to her motion a copy of one page of Judge Pregerson;s Financial Disclosure Report dated May 11, 1998, which states in pertinent part: "OI have no agreement with Pregerson, Richman & Luna except to receive my share of accounts receivable concerning payments {from} clients for services that were performed during my time there."[1]

[1] Pl.'s Mot., Ex. 1.

Wilson argues that the disclosure is "ambiguous," because it does not specify which clients owe sums to the firm, and thus which clients' payments the firm may share with Judge Pregerson. Accordingly, she seeks an order directing that Judge Pregerson make further financial disclosures, and argues that such relief is authorized by the Ethics in Government Act ("EGA"), 5 U.S.C. 102. Wilson also renews her motion for reconsideration of the order denying her request that Judge Pregerson be disqualified from hearing her suit against General Insurance Company of America. Although Wilson previously alleged that Judge Pregerson should be disqualified pursuant to 455(a), she now invokes 28 U.S.C. 455(b)(4). It Provides:

"[A judge] shall also disqualify himself in the following circumstances:...He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."

Wilson asserts that if there are outstanding bills from Pregerson, Richman & Luna to General for legal services rendered prior to August 1996, Judge Pregerson is entitled to a share of any payments General makes, and thus has a financial interest in the company to the extent of such payments. Wilson argues that this creates a bias that could come into play in her sweat against General because "Safeco/Genera; stands to lose a considerable amount of money when [she] prevails."[2]

General opposes Wilson's motion on two grounds. First, it argues that Wilson lacks stranding to seek an order requiring that Judge Pregerson supplement his financial disclosure statement because only the United States Attorney General is authorized to enforce the provisions of the EGA against a judicial officers. Second, general argues that Wilson's claim for reconsideration based on new evidence fails because, even if judge Pregerson were due some portion of the outstanding accounts receivable Genera; may owe his former firm, that does not amount to "a financial interest in... in a party to the proceeding... that could substantially affected by the outcome of the proceeding." 28 U.S.C. 455(b)(4).

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[2]Pl.'s Mot. At 3.

U.S.C. 455(b)(4). In addition, General requests that the court sanction Wilson under 28 U.S.C. 1927 as a party who has multiple[d] the proceedings in [the] case unreasonably and vexatiously..."[3]

Analysis

1. Wilson Lacks Standing to Enforce the Ethics in Government Act

Wilson requests an order "demanding full disclosure by Judge Dean D. Pregerson, of the identity of any and all clients and referrals, from whom he received payments, since his August of 1996 federal appointment[, as well as the] identity of any and all clients or referrals from who[m] he expects to receive payment in the future, listing [the] parties, names, dates, and amounts of payments."[4]

The Ethics in Government Act 5 U.S.C. App 101 et seq., requires that certain federal officials, including district judges, file annual financial disclosure reports containing a full statement of their assets, income and liabilities, as well as those of their spouses and dependent children. 5 Y.S.C. App 102. Once filed, the disclosure statements are made available to the public for review. 5 U.S.C. App 105. The Attorney General of the United States is authorized to bring a civil action against any individual judge who willfully violates the financial reporting provisions of the Act. 5 U.S.C. App 104. The court in which such an action is filed is empowered to assess a civil penalty ion an amount not to exceed $10,000. *Id.* The EGA does not expressly authorize private enforcement of the statute.

When Congress intends to create a private right of action under a statutory scheme that also contemplates enforcement by the Attorney General, it can be expected to indicate this fact expressly in the statute. For example, in the Federal Election

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[3] General also has filed evidentiary objections to Wilson's declaration (as argumentative) and her sole exhibit (as partial and lacking authentication). The Supreme Court had directed that federal trial courts read pro se papers liberally. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (per curiam). Following that direction, the court declines to exclude Wilson's evidence.

[4] Pl.'s Mot. At 4.

Campaign Act ("FECA"), a statute that establishes registration and reporting requirements for political committees, Congress explicitly provided for a private right of action. Unlike the EGA, FECA provides that "[a]ny person" who believes the FECA has been violated may file a complaint with the Federal Election order dismissing such a complaint may seek district court review (2 U.S.C. 437g(a)(8)(A)). The Supreme Court has held that such language expresses "a congressional intent to cast the standing net broadly," and creates a privates right of action to enforce the statute. *FEC v. Akins*, 524 U.S. 11, ---, 118 S.Ct. 1777, 1786 (1986).

The EGA does not contain any similar language, and a review of its statutory enforcement scheme suggests that no private cause of action should be implied. The Supreme Court has treated inferring a private cause of action as an issue of statutory construction, and has cautioned that, if a statute provides one sort of remedy, "courts must be especially reluctant to provide additional remedies." *Karahalios v. National Fed'n of Fed Employees, Local 1263*, 489 U.S. 527, 533 (1989) (administrative remedies provided be statute show clear congressional intent not to provides a private cause of action). See also *Middlesex County Sewerage Auth. V. National Sea Clammers Ass'n*, 453 U.S. 1, 15 (1981) ("In the absence of strong indicia of a contrary congressional intent, we are compelled to conclude that Congress provided precisely the remedies it considered appropriate").

As applied to judge, the EGA provides that "the Judicial Conference... shall refer to the Attorney General the name of any individual which such official or committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported." 5 U.S.C. App 104(b). The Attorney General may [then] bring a civil action in any appropriate United States district court against any individual who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to [the EGA.]" 5 U.S.C. App 104(a). The [district] court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $10,000." *Id.s* In addition, the "Judicial Conference may take any appropriate personnel or other action in accordance with applicable

law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported." 5 U.S.C. App. 104(c).

Because Congress crafted a comprehensive enforcement scheme within the EWGA, the court declines to create an additional remedy by inferring a private right of action. Consequently, Wilson lacks standing to challenge the adequacy of Judge Pregerson's Financial Disclosure Report, and the court denies her request for an order requiring additional disclosures on his part.

2. Judge Pregerson's Purported Financial Disclosure in General

The present record does not demonstrate that Judge Pregerson is owed monies by his former firm that relate to legal services performed for

General prior to August 1006, or that he has been owed such monies at any time during the pendency of Wilson's action against General. Even if it did, however, Wilson's motion for reconsideration based on new evidence would fail. Section 455 requires recusal when a judge has "a financial interest in... in a party to the proceeding... that could be substantially affected by the outcome of the proceeding." 28 U.SD.C. 455(b)(4). The evidence Wilson has presented does not support such an inference.

First Judge Pregerson's financial interest, if any, is in his former law firm, not in General. Wilson has presented no evidence that the firm is an investor in General, or that the financial relationship between the two as respects legal services performed prior to August 1996 is anything other than debtor and creditor. Wilson apparently claims that, because the sums she stands to recover are so large, they will imperil General's ability to pay the outstanding fees, and thus impact Judge Pregerson/'s right to receive money from his former firm.[5] Wilson erroneously assumes that her claim against General, a multi-billion dollar insurance conglomerate that has been in operation since 1923, could as affect that company's financial health as to put at risk its ability to pay outstanding legal bills. Even if Wilson were correct that an

[5] See Pl.'s Mot at 3 (arguing that "Safeco/General stands to [lose] a considerable amount of money when Plaintiff prevails").

interest in fees owed to outside counsel constitutes an interest in the client entity, therefore, the facts are such that no one could reasonably conclude Judge Pregerson has a financial interest in General "that could be substantially affected by the outcome of the proceeding." *Id.* Thus, recusal under 28 U.S.C. 455(b)(4) is not warranted.

Similarly, because Wilson's concerns are entirely speculative, and based upon a string of inferences, a reasonable person would not have cause to question Judge Pregerson's impartiality because of the information contained in his Financial Disclosure Report. Thus, recusal under 455(a) is also not required. See *United States v Nelson*, 718 F.2d 315, 321 (9th Cir. 1983) (the standard for judging whether an appearance of partiality requires recusal under 455(a) is an objective one, and involves ascertaining "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned").

3. General's Request for Sanctions

General seeks sanctions against Wilson pursuant to 28 U.S.C. 1927. Section 1927 authorizes an award of sanctions against a party who has multiplie[d] the proceedings in any case unreasonably and vexatiously..."[6] An award of costs, expenses and attorney fees pursuant to 1927 is within the court's discretion. *Powell v. National Football League*, 139 F.R.D. 381, 383 (D.Minn. 1991). While General correctly asserts that Wilson could have withdrawn her original recusal motion and/or delayed the filing of her earlier Rule 60(b) motion when she learned that Judge Pregerson's Financial Disclosures Report was available for review, the court cannot say conclusively that she acted unreasonably or vexatiously in filing those papers when she did.

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6 28 U.S.C. 1927 provides in full:

"Any attorney or other person admitted to conduct cases in any court of the United States of any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

Because Wilson is a *pro se* litigant, she cannot have been expected immediately to know the resources available to her in this regard or how to access them. Consequently, the court exercises its discretion not to award costs or sanction to General.

Conclusion

Wilson has not presented the court with a basis for altering its prior conclusion that recusal of Judge Pregerson under 455(a) is warranted. Similarly, she has failed to adduce sufficient evidence to support recusal under 455(b)(4). Consequently, Wilson's Rule 60(b)(2) motion is denied.

cc: **Counsel (or parties)**

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(*(Indicate part of report)*

* I was admitted to practice before the Supreme Court of Montana on August 31, 1990. My petition for admission requested a waiver of the bar examination. The petition was granted with the condition that should I wish to participate actively, I take the multi-state ethics exam, be certified as fit to practice and become a member of the State Bar of Montana. I have not sought to practice actively and have not sought to fulfill these conditions.

** I have no agreement with Pregerson, Richman & Luna except to receive my share of accounts receivable concerning payments form clients for services that were performed during my time there.

*** I have transferred, within the Smith Barney brokerage firm, my entire Smith Barney Pension/Profit Sharing Plan into my existing Smith Barney IRA. Items 1-16 listed in the 1996 Financial Disclosure Report have all been transferred. Assets were transferred on 1/24/97 with no change in value. Smith Barney cash funds were transferred into my IRA on 10/14/97.
**** I have also transferred my SLB Flex Prototype PS Plans with the Janus into my Smith Barney IRA. Please note those plans appear on lines 70 and 71 of the 1986 Disclosure Report.
***** I have transferred, completely, our Joint Fidelity Investments account into our Joint Smith Barney account as of January 1997. Please note that the Joint Fidelity Account information appeared on lines 63-65 in the 1996 Financial Disclosure Report.

Q

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
ENTERED FEBRUARY 17, 1999
CIVIL MINUTES- GENERAL

CASE No.: CV-98-3693 DDP (RZx) Date: February 15, 1999

Title: *Wilma Wilson v. State of California, et al.*

DOCKET ENTRY

PRESENT: HONORABLE MARGARET M. MORROW, UNITED STATES DISTRICT JUDGE **Anel Huerta**
N/A
Deputy Clerk Court Reporter

Attorneys Present for Plaintiff: **Attorneys Present for Defendants**
None **None**

PROCEEDINGS: In Chambers

This court was assigned plaintiff's motion to disqualify Judge Dean D. Pregerson, pursuant to 28 U.S.C. 455(a). The court issued an order on December 26, 1998, denying that motion. Pro se plaintiff Wilma Wilson has filed a Rule 60(b)(1) motion for relief from that order. Pursuant to Federal Rule of Civil Procedure 78 and Local Rule 7.11, the court finds the motion suitable for decision without hearing or oral argument.

Arguments that a district court has erred should generally be directed to the Court of appeals. See *Refrigeration Sales Co. v. Mitchell-Jackson, Inc.*, 605 F.Supp. 6, 7 (N.D. Ill. 1983). Under rule 60(b)(1), however, a court may relieve a party from a final judgment, order, or proceeding for reasons of "mistake, inadvertence, surprise, or excusable neglect." If the court has made an apparent error of law and the party moving for reconsideration brings that error to the court's attention within a reasonable period of time, the district court has power under Rule 60(b)(1) to grant relief from that error. *Liberty Mutual Insurance Company v. Equal Employment Opportunity Commission*, 691. F.2d 438, 440 (9th Cir. 1982). In order to obtain such relief, the movant must demonstrate that the court committed a specific error. See *Straw v. Bowen*, 866 F.2d 1167, 1172 (9th Cir. 1989). Wilson has identified what she believes to be several errors in the court's

December 26, 1998 order. The court addresses these seriatim below.

1. The Proper Statutory Basis for Decision

Wilson contends that the court erroneously decided her motion disqualify Judge Dean Pregerson under 28 U.S.C. 144 and 28 U.S.C. 455(b) despite the fact that she based the motion on 28 U.S.C. 455(a). Because the court found Wilson's pleadings unclear, it stated in the December 26, 1998 order that it "construe[d] Wilson's motion as adequately supported and brought pursuant to both 455 and 144." (Dec. 26 1998 Order at 2.) Title 28 U.S.C. 455(a) provides that "{a}ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."" Contrary to Wilson" assertion, the court applied the foregoing standard in its prior order.

"Wilson has adduced no evidence of actual bias. Nor is there an appearance of partiality in this case. The standard for judging whether an appearance of partiality requires recusal under 28 U.S.C. 455 is an objective one, and involves ascertaining "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *United States v. Nelson, 718 F.2d 315, 321 (9th Cir. 1983).* ****

The evidence adduced suggests that the only tie between Judge Pregerson and General is his prior representation of the company in unrelated matters. That fact alone, without more, is insufficient to cause a reasonable person to question Judge Pregerson's partiality in this matter." (Dec. 26, 1998 Order AT 4-5.)

Wilson also complained that is was error for the court to consider whether Judge Pregerson should be disqualified due to a possible actual conflict. The court considered alternative grounds because, as the Supreme Court has held, whenever a question involving disqualification is presented, it is critical promptly to examine all possible basis for the judge's disqualification. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864 (1988).

2. Proper Case Authority

Plaintiff argues that the court "cites only appellate decisions dating back to 1978 [whereas] the controlling case is *Liljeberg v. Health Services Acquisition Corp.*" In fact, the court relied on

case authority subsequent to *Liljeberg* that cites the standards established therein. See, e.g., *Preston v. United States*, 923 F.2d 731, 735 (9th Cir. 1991). Moreover, in *Liljeberg*, the Supreme Court held that the standard for determining whether a 455(a) violation has occurred is whether a reasonable and objective person, knowing all of the facts, would harbor doubts concerning the judge's impartiality. That standard is not materially different from the one the court employed in its prior order, that is, "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *United States v. Nelson*, 718 F.2d 315, 321 (9th Cir. 1983).

Despite plaintiff's insistence that the court should have relied upon *Liljeberg*, the case is not particularly helpful in analyzing the present matter, since it involved an actual conflict of which the judge was unaware. In *Liljeberg*, the district judge had presided over a trial concerning the ownership of certain land. During the trial, one of the litigants, John Liljeberg, Jr. was engaged in negotiations with Loyola University to purchase university land for a hospital site. The judge was a trustee of Loyola University. The judge ruled in favor of Liljeberg in the lawsuit, which directly impacted Liljeberg's ability to acquire land from Loyola University. The judge's relationship with Loyola was not discovered until after he had rendered his decision, and he claimed not to have recalled the real estate negotiations during the course of the trial. The Supreme Court held that the judge had had a financial interest in the outcome of the case before him. Even though he was unaware of the conflict. It thus concluded that the purpose of disqualification under 455(a) was to avoid "even the appearance of impropriety," and the vacating a judgment was a proper remedy.

Here, plaintiff states that she is not basing her request for disqualification on any actual conflict. The court fails to appreciate, therefore, how application of, or citation to, the Supreme Court's *Liljeberg* decision would have altered its December 26, 1998 ruling. The court applied the appearance of impropriety standard, and found there was no reason to disqualify Judge Pregerson from hearing plaintiff's case.

3. Span of time Since Judge Pregerson Represented Defendant

Wilson also contends that the court erroneously found it had been almost five years since Judge Pregerson represented General Insurance. The court made no such factual finding, but merely noted that Wilson "alleges that [Judge Pregerson] represented general Insurance in an unrelated matter almost five years ago." In her prior motion, Wilson relied on a 1994 document court filing that showed a prior association between Judge Pregerson and General Insurance. Wilson has now located another court document filed October 29, 1996, in an unrelated case, which reflects General Insurance's substitution of new counsel in place of Jeffry G. Kichaven of Pregerson, Richman and Luna. This document does not reflect any involvement by Judge Pregerson in the firm's representation of General in this unrelated action. Nor does it indicate that there is any connection between that matter and the present case pending before him. Consequently, this new evidence does not require Judge Pregerson's recusal.

Because Wilson has not identified any mistake or specific error in the court's December 26, 1998 order, her Rule 60(b)(1) motion for relief from that order is denied.

cc: Counsel (or parties)

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
ENTERED JANUARY 8, 1999
CIVIL MINUTES- GENERAL

CASE No.: CV-98-3693 DDP (RZx) Date: December 26, 1998

Title: *Wilma Wilson v. State of California, et al.*

DOCKET ENTRY

PRESENT: HONORABLE MARGARET M. MORROW, UNITED STATES DISTRICT JUDGE **Anel Huerta**
N/A

Deputy Clerk Court Reporter

Attorneys Present for Plaintiff: **Attorneys Present for Defendants**

None **None**

PROCEEDINGS: In Chambers

This court was assigned plaintiff' motion to disqualify Judge Dean D. Pregerson, pursuant to 28 U.S.C. 455(a). Pursuant to Federal Rule of Civil Procedure 78 and Local Rule 7.11, the court finds this motion suitable for decision without hearing or oral argument.

Plaintiff Wilma Wilson, appearing *pro se*, brought suit against a number of parties, including Safeco Insurance Company. Counsel for defendant Safeco advised the court that General Insurance Company of America, a Washington corporation had erroneously been sued as Safeco Insurance Company. General Insurance is Safeco's parent. As an exhibit to her motion Wilson has submitted a photocopy of a 1994 court filing in an unrelated matter signed by "Dean D. Pregerson, Attorney[] for Defendant and Cross-Claimant, General Insurance Company of America." (Pl.'s Mot., Ex. 1 at 2.)

Based on this document, Wilson contends "[t]here is a serious risk the Judge's impartiality might be questioned." She further complains that there was no full disclosure of Judge Dean Pregerson's prior association with General or Safeco,....[that her] failure to discover the association was due to the Judge's failure to disclose this possible conflict to [her, and that she] did not waive her right to his recusal." (Pl.'s Mot. At 2.)

Recusal of federal judges is governed by 28 U.S.C. 144 which applies to district court judges court judges, and 28 U.S.C. 455, which applies to justices, judges and magistrates alike. Under 144, the party seeking the recusal or disqualification of a judge must file a timely affidavit attesting that the judge to whom the matter has been assigned has personal bias or prejudice either against the party or in favor of an opponent. Specifically, the affidavit must state "the facts and reasons for the belief that bias or prejudice exists." 28 U.S.C. 144. Under 455, a judge must disqualify himself or herself where his or her impartiality might reasonably be questioned or where the judge has a personal bias or prejudice concerning a party.[1]

Wilson's papers are a hybrid in that they are in the form of a motion but are signed as if they were a declaration. Plaintiff cites 28 U.S.C. 455, rather than 28 U.S.C. 144, as the authority for her motion, and does not attach an affidavit as required by 28 U.S.C. 144. Wilson, however , is a pro se plaintiff, and is thus entitled to wide latitude in the pleading of her case. The Supreme Court has directed that federal trial courts read pro se papers liberally. See *Hughes v. Rowe*, 49 U.S. 5, 9 (1980) (per curiam). Consequently, the court therefore construes Wilson's motion as adequately supported and brought pursuant to both 455 and 144.

The bias or prejudice referenced in these statutes is not merely favorable or unfavorable disposition toward to party, but rather "favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not possess." *Liteky v. United States*, 510 U.S. 540, 550 (1994). "[J]udicial rulings alone almost never constitute valid basis for a bias or partiality motion," and even judicial remarks that are critical, disapproving or hostile to a party ordinarily are not sufficient to support a bias or partiality challenge. *Id.* At 555; see

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1 Motions to disqualify brought pursuant to 28 U.S.C. 455 are heard by "the very judge whose impartiality is being questioned." When an affidavit filed pursuant to 28 U.S.C. 144 alleges prejudice on the part of a district judge, however, that matter is determined by a different, randomly assigned judge. *Bernard v. Coyne*, 31 F.3d 842, 843 & n.3 (9th Cir. 1994).

also *Yagman v. Repbulic Insurance*, 987 F.2d 622 622 (9th Cir. 1993) (judge's rulings adverse to a party in a prior matter did not warrant recusal); *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986) (judge's prior ruling adverse to tax-protestor defendant not sufficient cause for recusal).

Under 28 U.S.C. 455(a) and (b)(2), (a) Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in this his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it..."

Section 455(a) covers circumstances that appear to create a conflict of interest, whether or not there is actual bias. *Davis v. Xerox*, 811 F.2d 1293, 1295 (9th Cir. 1987). Section 455(b) covers situations in which an actual conflict of interest exists, even if there is no appearance of one. *Id.* Construed liberally, Wilson's motion asserts both an actual conflict and the appearance of conflict, since she alleges that Judge Pregerson failed to disclose a possible actual conflict, and that his impartiality might reasonably be questioned.

Defendant general Insurance has opposed Wilson's motion to disqualify Judge Pregerson on several grounds. First, General contends that Wilson failed to provide that, "[I]f mailed, the notice of motion shall be served not later than twenty-four (24) days before the Motion Day designated in the notice." C.D.Cal.Rule 7.4.2 (1998). Wilson filed this motion on November 30, 1998, and the proof of service indicates that service by mail was effected the same day. Such notice was untimely because a mailed notice of motion setting a hearing date of December 21, 1998 would have to have been filed and mailed on or before November 27, 1998. Wilson claims that she attempted to file the motion on that date, but found that the Clerk's Office was closed. (Reply advised the court of difficulties encountered attempting to file papers with the clerk' Office on November 27, which was the day after the Thanksgiving holiday. Wilson, who is *pro se*, explains that she "neglected to change the hearing date" on her motion. (*Id.*)

Because the delay was minimal, and in any event did not prejudice defendant, the court finds that Wilson's neglect is excusable and declines to strike the motion as untimely served.

General also contends that Wilson's motion was untimely because the information regarding Judge Pregerson's prior representation of General was publicly available, and Wilson has failed to demonstrate that she brought the motion with reasonable promptness following her discovery of the facts upon which it is based. Additionally, General argues that Wilson's motion is untimely because it was filed after Judge Pregerson dismissed the case. Wilson claims she could not have brought the motion sooner because she only recently learned of Judge Pregerson's previous representation of General.

There is "no per se rule... regarding the time frame in which recusal motions should be filed after a case is assigned to particular judge." Rather, the Ninth Circuit has held that "recusal motions should be filed with reasonable promptness after the ground for such a motion is ascertained." *Preston v. United States*, 923 F.2d 731, 733 (9th Cir. 1991).

A motion to recuse cannot be based solely on adverse rulings (*Willner v. University of Kansas*, 848 F.2d 1023, 1028 (10th Cir. 1988), and a "motion filed shortly after [a judge] denie[s requested relief o]rdinarily... would indicate that the motion was not timely" (*Preston, supra*, 923 F.2d 17 733). The application of this rule depends, however, on when the movant first gained access to the information that forms the basis for the motion to disqualify. In *Preston*, movant's counsel claimed not to have learned of the judge's prior association with the law firm that represented his opponent until ten days before the motion was filed. The Ninth Circuit concluded that the motion to recuse the district judge had been timely filed despite the "close chronological relationship between the adverse ruling by [the judge] and the [filing of the] motion for his recusal," because the opponent offered "nothing but speculation that the [movants] were utilizing a disqualification issue as part of their trial strategy." *Preston, supra*, 923 F.2d at 733 and n. 3 (quotation omitted).

Wilson claims that on November 23, 1998, she "was advised that Judge Dean D. Pregerson had represented [General] prior to his 1996 appointment to the bench." (Reply at 2) Based on this

representation, it appears Wilson first learned of the potential conflict only a week before she filed her motion. General offers only speculation that Wilson knew about Judge Pregerson's prior representation of General at an earlier point in time. Thus, the court finds Wilson's motion is timely made.

In *Preston, supra,* the Ninth Circuit noted that section 455(b) "describes situations that create an apparent conflict, because it provides examples of situations in which a judge's impartiality might reasonably be questioned" pursuant to section 455(a)." 923 F.2d at 734. The court noted that section 455(b) provides... a concrete example where the appearance of partiality suffices to establish a ground for recusal under section 455(a) even absent actual bias." *Id.* The example set out in 455(b) "requires a judge's recusal if 'a lawyer with whom he previously practiced law served during such association as a lawyer *concerning the matter' then before the judge.*" *Id.* (emphasis added).

In *Preston,* a party sought to disqualify a judge because the judge had been "of counsel" at Latham & Watkins, which represented Hughes Aircraft. Although Hughes was not a party to the case, it was required to indemnify one of the parties if that party lost. Importantly, Latham & Watkins began its representation of Hughes in the matter while the judge was still "of counsel" at the firm. Because the judge had been at the firm during a time that it represented Hughes in the same matter over which he later presided, the Ninth Circuit found that the district court had abused its discretion be failing to disqualify the judge.

The case at bar is different in an important way. Wilson does not allege that Judge Pregerson or his firm represented General Insurance or Safeco *in this matter.* Rather, she alleges that he represented General Insurance in an unrelated matter almost five years ago. Other than this temporally remote connection, Wilson has presented no evidence from which actual bias may be inferred.

It is well-established that a judge's prior representation of one of the parties to a proceeding does not automatically warrant disqualification of the judge. See *U.S. v. Lovaglia,* 954 F.2d 811 (2nd Cir. 1992); *National Auto Brokers Corp. v. General Motors Corp.,* 572 F.2d 953 (2nd Cir. 1978) (prior representation of a party by a judge or his law firm with regard to a matter unrelated to

litigation before him does not automatically require recusal), *cert. denied,* 439 U.S. 1072 (1979); *Chitimacha Tribe of Louisiana v. Harry L. Laws Co., Inc.,* 690 F.2d 1157 (5th Cir. 1982) (fact that district judge represented a defendant at least six years before in unrelated matters did not require that judge disqualify himself in an Indian tribe's suit claiming ownership of a large tract of Louisiana land), *reh'g denied,* 697 F.2d 1092, *cert. denied,* 464 U.S. 814 (1983).

Wilson has adduced no evidence of actual bias. Nor is there an appearance of partiality in this case. The standard for judging whether an appearance of partiality requires recusal under 28 U.S.C. 455 is an objective one, and involves ascertaining " whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonable be questioned." *United States v. Nelson,* 718 F.2d 315, 321 (9th Cir, 1983). Wilson questions Judge Pregerson's partiality, speculating that General "may have helped him get appointed,... may hold the loan on his house,... may insure him, or [that he] may have been paid in [General] stock which he may own." (Pl.'s Reply at 5-6.) these speculations are not facts, however. The evidence adduced suggests that the only tie between Judge Pregerson and General is his prior representation of the company in unrelated matters. That fact alone, without more, is insufficient to cause a reasonable person to question Judge Pregeson's partiality in this matter.

Wilson's showing, therefore, falls short of that necessary to support recusal under either 144 or 455. Accordingly, plaintiff's motion to disqualify Judge Pregerson is denied.

cc: Counsel (or parties)

S **Substitution of Attorney**

Defendant, **GENERAL INSURANCE COMPANY OF AMERICA,** hereby substitutes Lee G. Lipscomb, Esq., Elizabeth L. Crooke, of the law firm of Engstrom, Lipscomb & Lack, 10100 Santa Monica Boulevard, 16th Floor, Los Angeles, California, 90067-4107; telephone number (310) 552-3800, facsimile 310-552-9434, as attorneys of record in place and in stead of Jeffrey G. Kichaven, Esq., of the law firm of Pregerson, Richman & Luna.
DATED: 10-24-96 GENERAL INSURANCE COMPANY OF AMERICA

By: ss/Annette M Rothe

I consent to the above substitution.

DATED: 10-28-96 PREGERSON, RICHMAN & LUNA
JEFFREY G. KICHAVEN
By: s/_____
Signature of Present Attorney

I am duly admitted to practice in this district.
Above substitution is accepted.

DATED: 10-28-96 ENGSTROM, LIPSCOMB & LACK
LEE G. LIPSCOMB
ELIZABETH L. CROOKE
By: s/_____
Signature of New Attorney

Approved: Terry J. Hatter, Jr.
United States District Judge

Note: Please check appropriate box to indicate whether new counsel was: X retained, or ☐appointed by the Court.

740.01

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Attorneys for Defendant and Cross-Claimant
GENERAL INSURANCE COMPANY OF AMERICA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
FILED MARCH 23, 1994

ANGELA WHITE; BRIAN WHITE; EVAN WHITE; GREGORY WHITE, Plaintiff,	) CASE NO. CV-94 0988 JSL
vs.	) NOTICE OF RELATED
UNITED STATES OF AMERICA; THG InFLITE AVIATION ADJUSTMENT GROUP, a Georgia Corporation; GENERAL INSURANCE COMPANY OF AMERICA, Washington corporation, Defendants.	) CASES AND REQUEST) FOR TRANSFER
GENERAL INSURANCE COMPANY OF AMERICA, Cross-Claimant	)
vs.	)
UNITED STATES OF AMERICA; THG InFLITE AVIATION ADJUSTMENT GROUP, a Georgia Corporation; and ROES 1-100 Cross-Defendants	)

The above-captioned matter arises from the crash of a Piper Saratoga aircraft, model PA-32-301, which occurred on May 5, 1992, in the Conejo Mountains in Ventura County, California resulting in the death of Plaintiff's decedent, Kenneth Dale McMillan among others, who was a passenger aboard the Piper aircraft.

There are presently pending in the Central District the following actions which arise out of the same incident:

Dicus v. United States of America, Case No. CV-94-0892 TJH (GHKx), filed on February 9, 1994; and

McMillan v. United States of America, Case No. CA-94-0933 WMB (Ex), filed on February 10, 1994.

The first filed matter, **Dicus v. United States of America** was assigned to the Honorable Terry J. Hatter. Thus, pursuant to the "Low Number" Rule of this Court and FRCP Rule 4.3.1., this action and all subsequent actions should so be assigned.

DATED: March 18, 1994 Respectfully submitted,
PREGERSON, RICHMAN & LUNA

s/_____
DEAN. D. PREGERSON,
Attorneys for Defendant and
Cross-Claimant, GENERAL
INSURANCE COMPANY OF AMERICA

Article III Section 2 The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority... between citizens of other States... In all the other Cases before mentioned the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

First Amendment Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment No person shall be held for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Seventh Amendment In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.

Eight Amendment Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Vexatious Litigant Statutes

Code of Civil Procedure 391 Definitions As used in this title, the following terms have the following meanings: **(b)(1)** "Vexatious litigant" means a person who does any of the following: (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing. **(b)(2)** After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) either the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined. **(b)(3)** In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay. **(b)(4)** Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

Code of Civil Procedure 391.1 Motion for Order requiring security; grounds In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he will prevail in the litigation against the moving defendant.

Code of Civil Procedure 391.2 Scope of hearing; ruling not deemed determination of issues At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. No determination made by the court in determining or ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

Code of Civil Procedure 391.3 Order to furnish security; amount If, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

Code of Civil Procedure 391.4 Dismissal for failure to furnish security When security that has been ordered furnished is not furnished as ordered, the litigant shall be dismissed as to the defendant for whose benefit it was ordered furnished.

Code of Civil Procedure 391.6 Stay of proceeding When a motion pursuant to Section 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the motion shall have been denied, or if granted, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 391.1 is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

Code of Civil Procedure 391.7 Prefiling order prohibiting the filing of new litigation; contempt; conditions **(a)** In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of such an order by a vexatious litigant may be punished as a contempt of court. **(b)** The presiding judge shall permit the filing of such litigation only if it appears that the

litigation has merit and has not been filled for the purposes of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefits of the defendants as provided in Section 391.3. **(c)** The clerk shall not file any litigations presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. If the clerk mistakenly files the litigation without such an order, any party may file with the clerk and serve on plaintiff and other parties a notice stating the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subdivision (a). The filing of such a notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within 10 days of filing of such notice obtains an order from the presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of any such order.

Code of Civil Procedure 412.20 Summons; formalities; contents In pertinent Part **(a)** Except as otherwise required by statute, a summons shall be directed to the defendant, signed by the clerk and issued under the seal of the court in which the action is pending, and it shall contain: **(3)** A direction that the defendant file with the court a written pleading in response to the complaint within 30 days after summons is served on him or her; **(4)** A notice that, unless the defendant responds, his or her default will be entered upon application by the plaintiff and the plaintiff may apply to the court for relief demanded in the complaint which could result in garnishment of wages, taking of money or property, or other relief.

Code of Civil Procedure 585 (b) Judgment if defendant fails to answer complaint Judgment may be had, if the defendant fails to answer the complaint, as follows: (b) In other (than contract or judgment) actions, if any of the defendant has been served, other than by publication, and no answer, demurrer, notice of motion to

strike (of the character herein specified), notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1,5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.120, or notice of filing of petition of writ of mandate as provide in Section 418.10 has been filed with the clerk, or the judge of the court within the time specified in the summons, or such further time as may be allowed, the clerk, or the judge if there is no clerk, upon written application of the plaintiff, shall enter the default of the defendant. The plaintiff thereafter may apply to the court for the relief demanded in the complaint; the court shall hear the evidence offered by the plaintiff, and shall render judgment in his or her favor for such sum (not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115), as appears by such evidence to be just.

Code of Civil Procedure 904.1 Superior court; appealable judgments and orders **(a)** An appeal may be taken from a superior court in the following cases: From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5000); From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5000).

Labor Code 3602(b)(2) An employee, or his or her dependents in the event of his or her death, may bring an action at law for damages against the employer, as if this division did not apply, in the following instances: **(2)** where the employee's injury is aggravated by the employer's fraudulent concealment of the existence of the injury and its connection with the employment, in which case the employer's liability shall be limited to those damages proximately caused by the aggravation. The burden of proof respecting apportionment of damages between the injury and the subsequent aggravation thereof is upon the employer.

Labor Code 3852 Claim for compensation; effect on third party action. The claim of an employee, including, but not

limited to, any peace officer or firefighter, for compensation does not affect his or her claim or right of action for all damages proximately resulting from the injury or death against any person other than the employer.

Title 5, United States Code, Appendix 4, Section 102 Contents of reports **(a)** Each report filed pursuant to section 101(d) and (e) shall include a full and complete statement with respect to the following: **(1)(A)** The source, type, and amount or value of income (other than income referred to in subsection (B)) from any source (other than current employment by the United States Government)...

Title 5, United States Code, Appendix 4, Section 102(a)(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to **(C)** continuation of payment by a former employer other than the United States Government.

Title 5, United States Code, Appendix 4, Section 102(b)(1) Each report filed pursuant to subsections (a), (b), and (c) of section 101 shall include a full and complete statement with respect to the information required by (A) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year.

Title 28, United States Code, Section 455 Disqualification of justice, judge, or magistrate (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. **(b)** He shall also disqualify himself in the following circumstances: **(4)** He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding; **(5)** He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: **(iii)** Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; **(e)** NO justice, judge or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is

preceded by a full disclosure on the record of the basis for disqualification.

Title 28, United States Code, Section 1254 Court of Appeals: certirorari Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: **(1)** By writ of certiroari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree

Title 28, United States Code, Section 1257 State Courts; certiorari (a) Final judgment or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any right, privilege , or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Title 28, United States Code, Section 1331 Federal Question The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

Title 28, United States Code, Section 1332(a)(1) Diversity of Citizenship; amount of controversy (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between-- **(1)** citizens of different States.

Title 28, United States Code, Section 1343 Civil rights and elective franchise (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: **(3)** To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

Title 28, United States Code, Section 1355 Fine, penalty or forfeiture (a) The district courts shall have original jurisdiction, exclusive of the court of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title. **(b)(1)** A forfeiture action or proceeding may be brought in - **(A)** the district court for the district in which any of the acts or missions giving rise to the forfeiture occurred

Title 28, United States Code, Section 1361 Action to compel and officer of the United States to perform his duty The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

Title 28, United States Code, Section 2106 Determination The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

Title 28, United States Code, Section 2201 Creation of remedy (a) In a case or controversy within its jurisdiction... as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Title 28, United States Code, Section 2202 Further relief Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

Title 42, United States Code, Section 1983 Civil action for deprivation of rights Every person who, under color of any

statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Circuit Rule 30-1.6 Excerpts of Records- Appellee's Supplemental Excerpts of Record If the appellee believes that the excerpts of record filed by the appellant exclude items which are required under this rule, or if argument in the answering brief requires review of portions of the reporter's transcript or documents not included by appellant in the excerpts, the appellee shall, at the time of the appellee's brief is filed, file supplemental excerpts of record, prepared pursuant to this rule, comprised of the omitted items. Appellee shall file five copies of the supplemental excerpts. The appellee shall serve one copy of the supplemental excerpts of record on each of the other parties.

Federal Rule of Civil Procedure 11 Signing of Pleadings, Motions, and Other Papers, Representations to Court, Sanctions (b) Representations to Court By presenting to the court (whether by signing, filing, submitting, ort later advocating) a pleading, written motion, or other paper, an attorney or underrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the

denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Federal Rule of Civil Procedure 12(f) Motion to Strike Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter

Federal Rule of Civil Procedure 15 Amended and Supplement Pleadings (a) Amendments A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the Party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Federal Rule of Civil Procedure 19 Joinder of Persons Needed for Just Adjudication (a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the persons claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (I) as a practical matter impair or impeded the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not bee so joined, the court shall order that the person be made a party. If the person

should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in the proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

Federal Rule of Civil Procedure 55 Default (a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default. **(b) Judgment.** Judgment by default may be entered as follows: **(2) By the Court.** In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action the party for, if appearing by representative, the party's representative shall be served at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damaged or top establish the truth of any averment by evidence or to make an investigation of any other matter the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

Federal Rule of Evidence 102 Purpose and Construction. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Federal Rule of Evidence 103 Rulings on Evidence. (a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and **(1)** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record,

stating the specific ground of objection, if the specific ground was not apparent from the context; **(d) Plain error.** Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Federal Rule of Evidence 201(e) A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

Federal Rule of Evidence 402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible All relevant evidence is admissible, except as otherwise provided by the Constitutional of the United State, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

Federal Rule of Evidence 403 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion or Waste of Time. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

Local Civil Rule 3.10.2 (7-3.10.2) Table of Contents and Table of Authorities. Any memorandum of points and authorities or any brief exceeding ten (10) pages in length, excluding exhibits, shall be accompanied by an indexed table of contents setting forth the headings or subheadings contained in the body thereof, and by an indexed table of the cases, statutes, rules, and other authorities cited.

Local Civil Rule 27A.4 (83-27A.4) References to State Statute. Although nothing in this rule shall be construed to require that such a procedure be followed, the Court may, at its discretion, proceed by reference to the Vexatious Litigants statute of the State of California, Cal. Code Civ. Proc. 391-391.7. Eff. April 1, 1998.